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COMMITTEE MEETING  
STATE OF CALIFORNIA  
INTEGRATED WASTE MANAGEMENT BOARD  
PERMITTING AND COMPLIANCE COMMITTEE

JOE SERNA, JR., CAL/EPA BUILDING  
1001 I STREET  
2ND FLOOR  
COASTAL HEARING ROOM  
SACRAMENTO, CALIFORNIA

MONDAY, NOVEMBER 5, 2007

1:30 P.M.

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CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 12277

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APPEARANCES

COMMITTEE MEMBERS

Ms. Rosalie Mulé, Chair

Ms. Cheryl Peace

BOARD MEMBER ALSO PRESENT

Ms. Margo Reed Brown

Mr. Wesley Chesbro

Mr. Gary Petersen

STAFF

Mr. Mark Leary, Executive Director

Ms. Julie Nauman, Chief Deputy Director

Mr. Elliot Block, Chief Counsel

Mr. Jerry Berumen, Staff

Mr. Michael Bledsoe, Staff Counsel

Mr. Harllee Branch, Staff Counsel

Mr. Michael Chen, Staff

Ms. Heather Hunt, Staff Counsel

Mr. Neal Johnson, Staff

Mr. Mike Leason, Supervisor, Minimum Content Compliance  
Section

Mr. Howard Levenson, Program Director, Waste Prevention &  
Market Development

Ms. Sherrie Sala-Moore, Branch Manager, Jurisdiction and  
Minimum Content Compliance Branch

Mr. Trevor O'Shaughnessy, Supervisor, Jurisdiction  
Compliance & Audit

APPEARANCES CONTINUED

STAFF

Mr. Edward Reidhead, Staff

Mr. Terry Smith, Staff

Mr. Scott Walker, Branch Manager, Cleanup Branch

Mr. Glenn Young, Supervisor, Closed, Illegal and Abandoned Sites

Ms. Lorraine Van Kekerix, Division Chief, Compliance Evaluation and Enforcement Division

Mr. Isacc Bazbaz, Progressive Bag Alliance

ALSO PRESENT

Mr. Steve Alexander, Association of Postconsumer Plastic Recyclers

Ms. Adriana Figueroa, City of Norwalk

Mr. Ernie Garcia, City of Norwalk

Ms. Laurie Hanson

Mr. George Larson, Illinois Tool Works

Mr. Terry Leveille, TL & Associates, Lakin Tire

Mr. Mike O'Grady, City of Cerritos

Mr. William O'Grady, Talco Plastic

Mr. Randy Pollack

Ms. Kristen Power, California Groceries Association

Mr. Pat Schiavo, City of Norwalk

Mr. Parham Yedidsion, Envision Plastics

INDEX

	PAGE
Roll Call And Declaration Of Quorum	1
Public Comment	
A. Program Directors' Report	2
B. Consideration Of The Adoption Of A Negative Declaration (State Clearinghouse No. 2007082163) And The Issuance Of A Major Waste Tire Facility Permit For Lakin Tire West, Inc., Los Angeles County -- (November Board Item 1, Committee Item B)	21
Motion	28
Vote	28
Motion	28
Vote	29
C. Consideration Of The Scope Of Work For The Environmental Investigation Services Contract (Integrated Waste Management Account And Solid Waste Disposal Trust Fund, FYs 2007/08, 2008/09 and 2009/10) -- (November Board Item 2, Committee Item C)	29
Motion	37
Vote	38
D. Consideration Of The Scope Of Work For The Laboratory Services Contract (Integrated Waste Management Account, FYs 2007/08, 2008/09, and 2009/10) -- (November Board Item 3, Committee Item D)	28
Motion	38
Vote	38
E. Consideration Of The 2003/2004 Biennial Review Findings For The Source Reduction And Recycling Element (Completed Time Extension, Good Faith Effort To Implement Programs) For The City Of Norwalk, Los Angeles County -- (November Board Item 4, Committee Item E)	10
Motion	21
Vote	21

INDEX CONTINUED

	PAGE
F. Consideration Of The City Of Cerritos` Request For An Extension To Compliance Order (IWMA BR07-02) Regarding The Due Date For Full Local Assistance Plan (LAP) Implementation -- (November Board Item 5, Committee Item F)	38
Motion	50
Motion	51
G. Discussion And Request For Rulemaking Direction On Noticing Proposed Revisions To The Rigid Plastic Packaging Container Regulations (Title 14, California Code Of Regulations, Sections 17942 et seq.) -- (November Board Item 6, Committee Item G)	51
H. Update And Request For Direction On The Determination Of The Co-Mingled Recycling Rate For The At-Store Recycling Programs Under AB 2449 -- (November Board Item 7, Committee Item H)	106
I. PULLED Discussion and Request For Direction Regarding Solid Waste Landfill Closure Cost Estimates -- (November Board Item 8, Committee Item I)	
J. Adjournment	136
K. Reporter's Certificate	137

1 PROCEEDINGS

2 CHAIRPERSON MULÉ: Good afternoon, everyone.

3 Welcome to the November meeting of the Permitting and  
4 Compliance Committee.

5 We have agendas on the back table. And we also  
6 have some speaker slips. So if anyone wishes to address  
7 the Board, please fill out a slip, bring it up to Donnell  
8 here, and then you will have an opportunity to address our  
9 Committee.

10 Before we get started, I would like to remind  
11 everyone to either turn off or put in the silent mode your  
12 cell phones and pagers, please.

13 And with that, Donnell, would you call the roll?

14 EXECUTIVE ASSISTANT DUCLO: Members Danzinger?

15 Peace?

16 COMMITTEE MEMBER PEACE: Here.

17 EXECUTIVE ASSISTANT DUCLO: Mulé?

18 CHAIRPERSON MULÉ: Here.

19 And Member Danzinger could not be here today.

20 Do you have any ex partes?

21 COMMITTEE MEMBER PEACE: Christina said I would  
22 be up to date by the time I got down here, so I think I'm  
23 up to date.

24 CHAIRPERSON MULÉ: And we also have Member  
25 Chesbro with us.

1           BOARD MEMBER CHESBRO: Is a non-committee member  
2 allowed to ex parte?

3           CHAIRPERSON MULÉ: I believe so.

4           BOARD MEMBER CHESBRO: I was all up together  
5 until I talked to George Larson out in the hall. George  
6 and I had a conversation about Item H, the plastic bag  
7 recycling item.

8           CHAIRPERSON MULÉ: Thank you.

9           With that, let's move to our Director's reports.  
10 We have Howard Levenson and Ted Rauh. Good afternoon.

11           PROGRAM DIRECTOR RAUH: Thank you very much,  
12 Chair Mulé. I would like to cover a couple of items for  
13 the Committee.

14           The first is the closure cost estimate dialogue  
15 which has been going on now for a month and a half. And  
16 our last workshop was today. I think the dialogue has  
17 been very beneficial for staff to get a very good  
18 grounding in terms of the business practices that we  
19 follow in reviewing closure plans and cost estimate  
20 analysis. And I think there's been a good exchange with  
21 the regulated community and to a certain extent LEAs on  
22 the topic as well.

23           In today's meeting, I think we reached a lot of  
24 common ground or have through the last three workshops and  
25 meetings and also learned a few things that we planned to

1 take forward as part of phase two of the regulatory  
2 development process.

3 But I do think that staff's approach to reviewing  
4 these documents and carrying out the existing regulatory  
5 framework has been communicated effectively to all parties  
6 involved.

7 One the interesting concepts that came up today  
8 is the notion of using the Board's permitting process as a  
9 possible venue for allowing a shorter time frame with  
10 which closure costs are developed. And this is an idea  
11 that we had initially identified as one of the early  
12 meetings. It was brought up today by several stakeholders  
13 as a possibility. We plan to look at that concept as part  
14 of the staff report in phase two regulatory initiatives.

15 So we'll be coming back with potential ideas. We  
16 may be able to do it administratively without regulatory  
17 change. There may be some ways we can do it that require  
18 regulatory change. But basically as a result of those  
19 workshops, the items that are appropriate for phase two  
20 will be brought to you at that time.

21 Next item I'd like to talk about is the proposed  
22 compliance strategy which we'll be bringing forward to the  
23 Committee in December. We have had a number of meetings  
24 with LEA and CCDEH leadership to talk about this approach  
25 which is our design to respond to the strategic directives



1 that you provided the staff to pursue in the compliance  
2 and enforcement area. And I think again those discussions  
3 have been very helpful for staff. I think the idea of  
4 increasing our presence with audits and a more effective  
5 use of triggers on the one hand has been seen as possibly  
6 a change in our relationship with LEAs. I think we've  
7 been able to successfully communicate that we are a  
8 partnership. That's the direction we want to move and  
9 that we can use these tools to enhance that partnership  
10 and actually put us in a better position to provide more  
11 timely technical assistance and also of course work  
12 collaboratively to move facilities off of the complying  
13 list.

14           So we're looking to receive comments from CCDEH  
15 early this month, and we hope to have that item wrapped up  
16 and for you in December. But we want to make sure that we  
17 have ample time to receive all the comments from local  
18 government. And if it causes us to push it back until  
19 January, we will. But we're currently on a schedule for  
20 December with you on that item.

21           The third area I'd like to talk about is the  
22 Board's response to the fire storm disaster in southern  
23 California. Cal/EPA designated the Board as the lead  
24 agency for debris removal. And we've been working for the  
25 last two weeks with the command structure providing a

1 number of products to the affected local governments.

2           And we've taken the success of the Agoura fire  
3 model and basically put that document into a forum that  
4 can be used by all the local governments in southern  
5 California. We've also taken the contract methodology we  
6 employed and made that generic, provided that information  
7 to the Department of General Services so as they have been  
8 developing a standard set of contractors that can  
9 pre-apply, they can apply utilizing the same kinds of  
10 requirements that we felt and found useful and informative  
11 and necessary to effectively carry out the program up in  
12 Tahoe.

13           Through those efforts, a lot of good things have  
14 been happening. And certainly we're not the only players  
15 in this process. But we have been leading the charge in  
16 terms of providing the technical information and  
17 assistance to local governments.

18           The three major burn areas, of course, are the  
19 city of San Diego, the county of San Diego, and the county  
20 of San Bernardino. That's not to downplay the tragedy  
21 that's befallen other parts of southern California. But  
22 those are the three areas where most of the structures  
23 have been destroyed.

24           Those three jurisdictions have been participating  
25 regularly on a multi-agency Committee that meets every day

1 at 3:00 downstairs on 210. The Waste Management Board is  
2 taking over leadership of that effort really starting  
3 tomorrow. And we will be managing that for Cal/EPA.

4 As a result of those meetings, we have been down  
5 to southern California with key technical staff, the same  
6 people that you're familiar with. Todd and Wes Mindermann  
7 have been in southern California on numerous meetings the  
8 week before last and last week helping those jurisdictions  
9 develop debris management plans, provide assistance on  
10 their contracting efforts. And we've seen a lot of  
11 positive movement.

12 One of the big frustrating points for everybody  
13 here has been trying to figure out the funding  
14 requirements for the federal government. How those  
15 funding requirements can be best addressed while we're  
16 moving forward. I think the traditional approach has been  
17 one that it takes quite a bit of time for people to  
18 respond in the recovery phase. So some of those systems  
19 are not really used to people ready to put boots on the  
20 ground within days or at least within a week after the  
21 emergency has occurred. In this case, while they're still  
22 fighting fires.

23 I think we've been able to within this consulting  
24 group to pull all the parties together and greatly  
25 expedite the process of applying for State funding and

1 also for working out the details of how FEMA funding may  
2 be able to be applied to this important effort.

3           As it stands right now, the city of San Diego is  
4 about to enter into a contract with Diani, who as you know  
5 is our contractor. They have already had at least one  
6 public meeting. We'll have another one later this week.  
7 They're utilizing a right of entry forum that models very  
8 closely what we used at Tahoe. Actually, what El Dorado  
9 County used at Tahoe. As a result of that, they already  
10 have people signed up for the program. Hazardous waste  
11 efforts through our sister agency, the Department of Toxic  
12 Substances Control, with very able assistance from U.S.  
13 EPA Region 9 had assembled teams and are meeting today  
14 with all three jurisdictions today and tomorrow. And we  
15 expect to see the household hazardous waste collection  
16 beginning in earnest by Wednesday. In all three  
17 jurisdictions, it will be underway by Friday.

18           The furthest along is the city of San Diego. And  
19 they are currently planning to have their contractor in  
20 place and debris actually being picked up by the 14th of  
21 this month. So again we're applying this model I think  
22 very effectively. And one of the good things that's  
23 coming out of this is we're learning as we go with all  
24 these additional eyes. And we're able to document that  
25 learning so that we'll be that much more prepared if such

1 a tragedy occurs the state in the future.

2 But so far, it's moving well. And I also want to  
3 mention Tabetha Willmon, who was our Assistant Operations  
4 Chief, actually the planning director, for the latter part  
5 of the response, has joined this group and is working as  
6 the manager of the off center down in 210. So if you have  
7 a chance, I would encourage you to drop by and stop in and  
8 say hello. And you'll see a lot of activity from the  
9 Local Assistance staff in the Sustainability Programs  
10 supporting this effort jointly with the folks in my  
11 program as we move forward to provide both the planning  
12 and the operations support to those affected by the fire.

13 That basically concludes my report.

14 CHAIRPERSON MULÉ: Thank you, Ted. I just want  
15 to thank you, Ted, and staff, and Mark. And I know Chair  
16 Brown has been very busy and involved in this effort. It  
17 really is very impressive. And I'm proud to say that I'm  
18 a part of this organization that really has led the charge  
19 in terms of expertise and knowledge on how to move that  
20 whole debris removal aspect of this disaster forward. You  
21 all are doing a great job.

22 I know the long hours that you put in. It's a  
23 lot of work. I've lived it. It's not easy. Thank you  
24 for all your work, your persistence, and in making this  
25 happen.

1           I was so proud when I read the articles in the  
2 newspaper that cited the Agoura model, because we've been  
3 calling it that here at the Board for quite some time.  
4 But to see that it's now catching on throughout the state  
5 and that people are really recognizing that what we did in  
6 the Tahoe fire really has applications with other  
7 disasters. So again, thank you all for your work. It's  
8 just been a great effort.

9           COMMITTEE MEMBER PEACE: I'll just echo what  
10 Chair Mulé has said to thank everyone. And I, too, am  
11 very proud of the part of this organization. Because I  
12 have had contact directly with the mayor's office, and  
13 they have had nothing but good things to say about our  
14 staff and the help we're giving them. So thank you.

15           CHAIRPERSON MULÉ: Any other questions, comments?  
16           Howard, do you have a report?

17           PROGRAM DIRECTOR LEVENSON: I couldn't follow up  
18 that report on the fire. That's pretty impressive set of  
19 circumstances. I think Ted is only going into a little  
20 bit of the detail. I want to thank him for all of his  
21 work on this.

22           I don't have a report. I'll defer my reports to  
23 the Market Development Sustainability Committee.

24           CHAIRPERSON MULÉ: Before we get started, I want  
25 to note Item 8 has been pulled from the agenda. And

1 Committee Item E will be heard first. So with that I'll  
2 hand it over to you, Howard.

3 PROGRAM DIRECTOR LEVENSON: Thank you, Madam  
4 Chair.

5 This item is Consideration of the 2003-04  
6 Biennial Review Findings for the Source Reduction and  
7 Recycling Element for the City of Norwalk.

8 This is one of our last remaining jurisdictional  
9 issues from the 2003-2004 biennial review cycle. As you  
10 know, the city had an SB 1066 time extension. And as  
11 staff, we've used that time judiciously to see how the  
12 city has implemented their various programs to increase  
13 diversion.

14 I think this reflects the Board's approach of  
15 looking more at programs than strictly at the percentage  
16 diversion numbers, which don't necessarily reflect the  
17 efforts of a jurisdiction to implement new programs.

18 We're pleased to report and you'll hear more  
19 about this, but for example, the city has implemented more  
20 aggressive construction and demolition programs and  
21 overall disposal has declined. You'll hear a lot more  
22 about this.

23 With that, I'll turn the presentation over to  
24 Edward Reidhead from our southern California office and  
25 he'll proceed.

1 MR. REIDHEAD: Thank you. Good afternoon,  
2 Committee members.

3 Board staff is bringing forward the 2003-2004  
4 biennial review for the city of Norwalk with a  
5 recommendation to approve a good faith effort in meeting  
6 diversion requirements.

7 The city's 2003-2004 diversion rates are 31  
8 percent and 40 percent respectively and are based on the  
9 city's 1999 base year. The city has also submitted a new  
10 base year study for the year 2006.

11 Board staff reviewed the submittal and has  
12 determined the diversion rate to be 46 percent in 2006.  
13 The new study includes a more accurate evaluation of  
14 commercial diversion activities. Approval of the study is  
15 recommended by staff in a separate delegated item to the  
16 Executive Director.

17 The city is currently implementing approximately  
18 40 diversion programs that were identified in its source  
19 reduction and recycling element. The city continues to  
20 implement source separated automated residential curbside  
21 recycling and green waste collection programs and MRF  
22 processing of all commercial sector waste.

23 The city's C&D ordinance is being fully  
24 implemented, and staff have verified projects are being  
25 tracked and materials are being diverted.



1 Board staff recommends the Board adopt Agenda  
2 Item Option Number 1 and find that the city of Norwalk has  
3 made a good faith effort in meeting diversion requirements  
4 for the 2003-2004 biennial review.

5 The item did not include a demographic and  
6 economic data table. Board staff have placed handouts of  
7 this table in the back of the room. This information will  
8 be added into the agenda item prior to the November 13  
9 Board meeting.

10 Mr. Ernie Garcia, City Manager, and Ms. Adriana  
11 Figueroa, administrative services assistance are here  
12 today and available to answer any questions the Committee  
13 may have.

14 This concludes my presentation.

15 CHAIRPERSON MULÉ: Thank you, Edward.

16 Before we take questions, do either of you want  
17 to address the Committee? I do have speaker slips for  
18 you. Did you want -- or are you just available for  
19 questions? Please come forward and state your name for  
20 the record, please.

21 MR. GARCIA: Ernie Garcia, City Manager, City of  
22 Norwalk.

23 I'd like to take this opportunity to thank the  
24 Board for entertaining this session today. And we're  
25 prepared to provide any answers to the questions you have.

1 Norwalk has been diligently working on this item  
2 for a number of years. We take it very seriously.

3 I'd just like to indicate that we have  
4 implemented a number of programs both in English and  
5 Spanish including tours of school children and recycling  
6 centers, e-waste, just a number of programs that we felt  
7 were valuable. And we feel that we're on the road to  
8 getting to compliance. We tried most everything possible  
9 to get there. And I'd like to have Ms. Figueroa just  
10 highlight just a few of those for you.

11 CHAIRPERSON MULÉ: Thank you, Mr. Garcia.

12 MS. FIGUEROA: Thank you, Mr. Garcia, Madam  
13 Chair, members of the Board -- or the Committee.

14 As Mr. Garcia indicated, we do have several  
15 programs --

16 CHAIRPERSON MULÉ: Can you state your name for  
17 the record?

18 MS. FIGUEROA: Sure. Adriana Figueroa, City of  
19 Norwalk.

20 We do have several programs implemented in the  
21 city, and I'm just going touch on them lightly. We do  
22 have a lot of materials in English and Spanish, because we  
23 do have a high population of Spanish speakers. We did  
24 print out materials such as this and that are handed out  
25 to the community both again in English and Spanish.

1           We also do neighborhood cleanup events, about  
2 twelve a year. So about once monthly.

3           And letters along with fliers are sent out to the  
4 community, you know, right about few days before it  
5 happens so that speak can take out the materials. Same as  
6 used oil programs.

7           We also do trash billing inserts on any of the  
8 programs that we may have. If we have an e-waste  
9 collection event happening, we do it. We do a mailer in  
10 the trash bill. And we also put it on cable television.  
11 And we do our monthly newsletter, which is Norwalk Now.  
12 So we use everything we possibly can.

13           This is just an example of one of the mailers we  
14 have and again English and Spanish.

15           We do have a procurement policy in the city.  
16 It's to buy recycled materials whenever possible. And I  
17 do have a copy of that here. I can pass that around for  
18 you later on if you want.

19           One of the things we do as Mr. Garcia indicated  
20 is we have a program with the kids. We have several  
21 programs with children in the community. One of them is  
22 we create a calendar every year based on recycling  
23 contest. What it is is we get all the fifth graders  
24 involved and we pull out materials like this from them,  
25 have them fill out a recycling sheet. And then with that

1 we create our annual calendar. And their picture is  
2 portrayed in here. It's pretty nice and neat for the  
3 kids.

4 We also do school tours where the kids come in  
5 and view city hall and all the services that we have.

6 And one of the things we've implemented I believe  
7 may be mid-last year is we started a 20-minute  
8 presentation on recycling for the kids. So we isolate 20  
9 minutes just strictly on recycling programs. And the kids  
10 get a recycle bag with all the recycled content material  
11 in there.

12 Here's some of the pictures that show how much  
13 fun the kids can have with recycling.

14 We have recycling containers at all of our city  
15 sponsored event. This is just one of our -- we did a  
16 toilet exchange not too long ago. This was just drive by  
17 traffic, but we still have the recycling containers there  
18 too.

19 We have our quarterly newsletter, which is our  
20 one person's trash. And that again comes out every  
21 quarter. It's in English and Spanish. And I'm sure  
22 you've seen this. It has all the information on recycling  
23 programs for the city.

24 We have a Christmas tree program, and that also  
25 is sent out in the form of a trash mailer insert. So

1 people can know when to put out their trees and how to do  
2 that.

3           And as mentioned before, we have an extensive C&D  
4 program that people have to come in if their project meets  
5 the criteria, they have to fill out a Waste Management  
6 Plan. And we keep a log of that. I brought just this  
7 printout of our log. It's about 1200 entries to date  
8 since we started logging. It's about 13 pages, but it's  
9 pretty detailed. It shows when they came in, who came in,  
10 the deposit, the security deposit, when the check was  
11 reimbursed, how much was recycled and where. All of that  
12 good stuff.

13           We have some recycling materials for the  
14 community. We also have started to in our specifications  
15 for projects for engineering projects we have a listing  
16 here that requires them to comply with our C&D program,  
17 even though it's a city project. Any contract that's  
18 given out through engineering has to comply with their C&D  
19 program.

20           And these are just the project specs.

21           And I think that's about it. Just some of the  
22 stuff that I brought over and just some on the C&D  
23 program. We mail out information to the property owner  
24 letting them know what the program is about. And again  
25 it's in English and Spanish. That goes out as soon as

1 they come and pull a permit.

2 So I'm here to answer any questions that you may  
3 have.

4 CHAIRPERSON MULÉ: Great. Thank you, both.  
5 Questions? Board Member Peace.

6 COMMITTEE MEMBER PEACE: I guess your population  
7 is up. Your disposal is down. The pounds of waste per  
8 person that you generate is about half the state average.  
9 So those are all good things.

10 Can you tell me what is like your largest  
11 commercial business that you have in the city?

12 MS. FIGUEROA: I think Pat has that information.

13 MR. SCHIAVO: Pat Shiavo representing the City of  
14 Norwalk.

15 There's about a thousand commercial businesses in  
16 the city. About 800 are handled by Consolidated, about  
17 200 by CR&R.

18 We went out and surveyed about 76 businesses. I  
19 say about because we went to a few and there's no response  
20 so we moved on.

21 Of those 76 businesses, the top ten businesses  
22 represented 72 percent of that total. And typically --  
23 I'll get back to your question. But typically in 35  
24 percent of all cases, the top ten businesses are about 90  
25 percent of that total. And in about 60 percent of the

1 cases, it represents about 80 percent of that total. In  
2 this case, it's lower. And if you extrapolate that out to  
3 almost 900 businesses, it's in the 60 percent levels.

4           There's really four businesses, they had some  
5 small manufacturing that took place, some refurbishing and  
6 those four businesses each had about 2,000 tons. And then  
7 from there we went down to Wal-Mart, then Costco, and then  
8 grocery stores, and then there just wasn't much diversion.  
9 And we just called it quits after that 76th business,  
10 because it wasn't cost effective. We figured if we went  
11 down and surveyed all the rest of the businesses in the  
12 city, we may or may not get another percent of diversion  
13 out of it.

14           But just if you look at comparative cities and I  
15 was looking at -- we affectionately call it the spread  
16 sheet from hell that we built with all these diversion  
17 elements if it looking at past base years, the city  
18 compares very favorably as far as when you look at  
19 percentages and population to what other cities have done.  
20 What I've noticed is like, for instance, there's some  
21 cities that get literally hundreds of thousands of tons  
22 from one generator of division. It just isn't here.

23           C&D project wise -- jump ahead a little bit.  
24 There isn't that much going on in that world. But these  
25 guys track it very closely. Adriana has a list of 1200

1 businesses she tracks on an ongoing basis. That's one of  
2 those heavy materials -- Santa Barbara Unincorporated,  
3 they get a large percentage of their diversion from C&D.  
4 It just isn't here. That's part of the --

5 CHAIRPERSON MULÉ: So let me just clarify  
6 something here. So the top ten businesses generate 70  
7 percent of the commercial waste stream in the city.

8 MR. SCHIAVO: That we surveyed.

9 CHAIRPERSON MULÉ: That you surveyed. So it  
10 sounds like the majority of businesses are smaller  
11 businesses, mom and pop so to speak, difficult to set up a  
12 recycling program. So is that why you take the commercial  
13 waste stream and dirty MRF it?

14 MR. SCHIAVO: Yes, absolutely.

15 CHAIRPERSON MULÉ: Thank you.

16 COMMITTEE MEMBER PEACE: I guess the only other  
17 question I had is you mentioned you do buy recycled  
18 products. And can you give me examples of some of the  
19 recycled products that your city buys?

20 MS. FIGUEROA: Mainly they are office supplies.

21 COMMITTEE MEMBER PEACE: Anything other than  
22 office supplies? Do you buy re-refined oil, recycled oil  
23 for your city vehicles?

24 MS. FIGUEROA: Not that I know, but I can go back  
25 and check.



1 COMMITTEE MEMBER PEACE: That's something to  
2 consider. Because when you can't get TO 50 percent, at  
3 least you can do your part by buying the recycled  
4 products.

5 Also, do you know if you use like their recycled  
6 aggregate in your road base and stuff like that?

7 MS. FIGUEROA: No, I don't believe we do.

8 MR. SCHIAVO: We talked about that several times  
9 actually. And there just isn't any volume at this point  
10 in time. There hasn't been any road reconstruction  
11 projects.

12 COMMITTEE MEMBER PEACE: If you can look at other  
13 things as you go along. If you can't get to 50 percent,  
14 maybe you can do other things by buying the re-refined  
15 oil, buying the recycled paint when you paint your schools  
16 or your city office buildings. That to me is making --  
17 going beyond making a good faith effort when you use the  
18 recycled products.

19 I don't have any further questions.

20 CHAIRPERSON MULÉ: Board Member Chesbro.

21 BOARD MEMBER CHESBRO: Yes, Madam Chair. First  
22 of all, I want to congratulate you on the progress that's  
23 been made, both on the numbers and the program  
24 implementation. It's clear enthusiasm and commitment I  
25 hear coming through.

1           On the other hand, I want to point out as I do to  
2 every jurisdiction that's not at 50 percent, nothing  
3 personal, it's been 17 years since the law passed. So  
4 keep making that progress. I want to add that as a little  
5 sense of urgency to the importance of continuing to push  
6 forward. But it's clear that you're working on it and we  
7 appreciate that.

8           CHAIRPERSON MULÉ: Thank you.

9           Any other questions or comments?

10          Do I have a motion?

11          COMMITTEE MEMBER PEACE: I'd like to move  
12 Resolution 2007-218.

13          CHAIRPERSON MULÉ: And I will second that.

14          Donnell, would you call the roll?

15          EXECUTIVE ASSISTANT DUCLO: Members Peace?

16          BOARD MEMBER PEACE: Aye

17          EXECUTIVE ASSISTANT DUCLO: Chair Mulé?

18          CHAIRPERSON MULÉ: Aye.

19          Okay. That passes. And we will put that one on  
20 consent.

21          Thank you, all. Now we're going to go back to  
22 Committee Item B, Ted.

23          PROGRAM DIRECTOR RAUH: Thank you, Madam Chair.

24          Item B is Consideration of the Adoption of a  
25 Negative Declaration, State Clearinghouse Number

1 2007082163 and the Issuance of a Major Waste Tire Facility  
2 Permit for Lakin Tire West, Incorporated, of Los Angeles  
3 County.

4 And to make the staff presentation today is Terry  
5 Smith.

6 MR. SMITH: Good afternoon.

7 On August the 7th, 2007, the Board received an  
8 application for a major waste tire facility permit from  
9 Lakin Tire West, Incorporated, for building number two,  
10 which is located at 15055 Spring Avenue adjacent to  
11 Lakin's main facility. Both facilities are in Santa Fe  
12 Springs.

13 The permitting of building two would authorize  
14 the storage of up to 25,000 waste tires in that building.  
15 The new facility will work in conjunction with Lakin's  
16 main facility and will allow Lakin to increase their used  
17 tire storage capacity for inventory.

18 Selected grades of good tires would move from the  
19 main facility over to the new facility, or building two as  
20 we're calling it. And they would remain on pallets, be  
21 stored in pallets, until they can be sold and removed from  
22 the building.

23 The City of Santa Fe Springs reviewed this  
24 project and determined that because it's located in a  
25 heavy manufacturing zone they didn't require a conditional

1 use permit and they didn't do an environmental study.

2           Since the approval and issuance of a waste tire  
3 facility permit is considered a project under the  
4 California Environmental Quality Act guideline, the Board,  
5 acting as lead agency for the purposes of CEQA, prepared a  
6 negative declaration State Clearinghouse Number  
7 2007082163. The negative dec developed by staff evaluates  
8 potential environmental impacts associated with the  
9 project approval.

10           The negative deck demonstrates on a basis of  
11 substantial evidence in the record that the proposed  
12 project will not have a significant effect on the  
13 environment. The negative dec was circulated through the  
14 State Clearinghouse and placed on the Board's website and  
15 made available at the Cal/EPA library and in the southern  
16 California L.A. office for tire enforcement.

17           Public notice was placed in the local paper, the  
18 Whittier Daily News. The Notice of Intent to Adopt, which  
19 includes the project description, was hand delivered to  
20 the businesses adjacent to the proposed project. And the  
21 public comment period ran from August 31st, 2007, to  
22 October 1st, 2007. Staff only received one comment and  
23 the comment was advisory in nature and didn't identify any  
24 significant effect of the project approval.

25           At this point I'd like to call your attention and

1 point to a typo that's on page 42 of the negative  
2 declaration and Attachment F. The header of that  
3 Attachment 3 is minor and it should be major.

4 And I'd like to also point out that everywhere  
5 else in the negative dec, including the permit itself, the  
6 title page, project description, and Notice of Intent,  
7 table of contents and all identified as a major permit.

8 In conclusion, staff has determined that all the  
9 requirements to approve the major waste tire facility  
10 permit have been met, including all the applicable local  
11 requirements which include fire and planning department  
12 approval, completion of application CIWMB forms 500  
13 through 504, financial assurance and operating liability  
14 requirements, compliance with the storage standards. And  
15 with the Board's adoption of this negative declaration the  
16 California Environmental Quality Act requirements will be  
17 satisfied.

18 Therefore, staff recommends the Board adopt  
19 Resolution Number 2007-233 adopting the negative  
20 declaration and Resolution Number 2007-234 approving the  
21 issuance of the major waste tire facility permit TPID  
22 number 1464958.

23 This concludes staff's presentation.

24 CHAIRPERSON MULÉ: Thank you, Terry.

25 We do have one speaker, Terry Leveille.

1           MR. LEVEILLE: Thank you, Chair Mulé and  
2 Committee Member Peace and Board Member Chesbro. Terry  
3 Leveille, TL & Associates representing Lakin Tire.

4           If you have any questions about the negative dec,  
5 I'm here to answer any questions.

6           I have a more interesting avenue to pursue though  
7 that Lakin would like me to suggest to the Committee and  
8 ultimately to the Board. And that is that a tweak on the  
9 regulations. This is right currently the state  
10 regulations allow for storage of crumb rubber on site, and  
11 it doesn't effect your major waste tire numbers of PTEs.

12           We would like to suggest that the Board look at  
13 broadening that exemption from numbers of tires stored on  
14 site to include a product that has been probably the  
15 strongest consumer product of the last five or six years  
16 in the tire-derived markets. And that is the mulch  
17 buffings. We would like to suggest that staff maybe look  
18 at opening up the definition of exemption to include  
19 bagged colorized buffings that are for sale --

20           CHAIRPERSON MULÉ: So they would be processed?

21           MR. LEVEILLE: They would be processed. They  
22 would be colorized. They would be bagged. They would be  
23 ready to go. They shouldn't count against a facility's  
24 waste tire numbers of PTEs.

25           This is actually a feather in the cap of the

1 Board. The Board has been very good at promoting these  
2 kinds of products in their various marketing and grants.  
3 And this is one product that has really taken off. And  
4 there's about four companies statewide. I'm not just  
5 speaking for Lakin. There's four companies statewide that  
6 make this product.

7 The purpose of the regulations essentially is to  
8 prevent a company from going out of business and having  
9 the Board cover the cost of removing the product. And  
10 usually we're talking about shreds or whole tires. In  
11 this case, you've got a value-added product. You've got a  
12 product that isn't a cost. As long as it meets all the  
13 local fire department requirements, we would think that it  
14 would be incumbent upon the Board to take a look -- as  
15 they say, tweaking this regulation to go beyond allowing  
16 crumb rubber to receive an exemption and looking at a more  
17 refined product that has a value-added element to it.

18 CHAIRPERSON MULÉ: Thank you. We can take that  
19 under advisement. Okay. Thank you, Terry.

20 Any questions for staff? Board Member Peace.

21 COMMITTEE MEMBER PEACE: Well, I don't have a  
22 problem with the permit at all. You know, Lakin is one of  
23 the recycling stars here in the state.

24 But I guess my question is why did the Board have  
25 to prepare the neg dec as lead agency instead of the city

1 of Santa Fe Springs? I don't understand.

2 MR. SMITH: Well, that's because the issuance of  
3 a permit by a State agency is a project under CEQA  
4 guidelines. And so if the local agency doesn't do it,  
5 then we have to take over as lead agency and do some kind  
6 of analysis on it.

7 COMMITTEE MEMBER PEACE: And they don't do it  
8 because we're the ones issuing the permit?

9 MR. SMITH: They didn't do it in this case. I  
10 tried to get them to do it, believe me, because it's a lot  
11 of work.

12 I talked to the planning department down there.  
13 Got them to go look at this facility and the area it's in.  
14 And they looked through all the existing documentation and  
15 it's in the right zone for them. They didn't consider it  
16 above and beyond what the zoning allowed in that area. So  
17 it wasn't required for them to do an environmental  
18 analysis in their eyes.

19 COMMITTEE MEMBER PEACE: So it's in their city  
20 and they don't feel like they need an environmental  
21 review? So we have to do it even though the city says --

22 ACTING DEPUTY DIRECTOR SMITH: Well, because  
23 we're issuing -- are you going to take over? Thank you.

24 STAFF COUNSEL BLEDSOE: Michael Bledsoe from the  
25 Legal Office.



1           Everything you said was right, Terry. The magic  
2 words are at the local level there was no discretionary  
3 action. So because by the zoning, Lakin could operate  
4 this facility as of right. They didn't have to get  
5 anything of the building permit from the city or county  
6 whichever it was. Therefore, we had the next  
7 discretionary action. So that's why we had to prepare the  
8 environmental document.

9           A building permit is not considered normally a  
10 discretionary action. But I would be happy to chat with  
11 you afterwards if I can help flush out the answer.

12           COMMITTEE MEMBER PEACE: We'll chat after. No  
13 more questions.

14           CHAIRPERSON MULÉ: Any questions, Member Chesbro?  
15 No.

16           Okay. With that, we have two Resolutions  
17 2007-233 -- do we take them separately?

18           STAFF COUNSEL BLOCK: Yes, you should actually do  
19 them separately.

20           CHAIRPERSON MULÉ: So first is a motion for  
21 2007-233.

22           COMMITTEE MEMBER PEACE: I'd like to move  
23 Resolution 2007-233.

24           CHAIRPERSON MULÉ: Second.

25           Could you call the roll?

1 EXECUTIVE ASSISTANT DUCLO: Members Peace?

2 COMMITTEE MEMBER PEACE: Aye.

3 EXECUTIVE ASSISTANT DUCLO: Chair Mulé?

4 CHAIRPERSON MULÉ: Aye.

5 That one passes.

6 And then 2007-234.

7 COMMITTEE MEMBER PEACE: I'd like to move  
8 Resolution 2007-234.

9 CHAIRPERSON MULÉ: Second.

10 And we'll substitute the previous roll.

11 We will put both of those on consent. Thank you  
12 all very much.

13 And thank you, Terry, for your comments.

14 Okay. Moving right along, we're now on Committee  
15 Item C, Board Agenda Item 2, Ted.

16 PROGRAM DIRECTOR RAUH: Item C is Consideration  
17 of Scope of Work for the Environment Investigation  
18 Services Contract.

19 This contract is funded by both the Integrated  
20 Waste Management Account and the Solid Waste Disposal  
21 Trust Fund and would cover three fiscal years starting  
22 this year going out through 2009-10. And here to present  
23 the item is Glenn Young.

24 (Thereupon an overhead presentation was  
25 presented as follows.)

1           SUPERVISOR YOUNG: Good afternoon, Chair Mulé,  
2 Committee Member Peace.

3           I'd like to first just thank Holly Armstrong and  
4 Carol Baker for their help on pulling this together, the  
5 financial piece and the legal Piece.

6           The Scopes of Work for the environmental services  
7 and lab services contract are very critical to the work  
8 that is being done in the closed, illegal, abandon site  
9 section as well as the cleanup, closure, and financial  
10 assurances section. If I can just --

11                               --o0o--

12           SUPERVISOR YOUNG: Title 14 in the PRC specify  
13 that the Board provide guidance to LEAs on the inspection  
14 and investigation of closed disposal sites to the protect  
15 public health and safety and the environment.

16           And just as a brief scenario, there was a piece  
17 of news yesterday that I just found out about that four  
18 workers were killed at a landfill in Superior, Wisconsin  
19 yesterday. They were working in a confined space area and  
20 overcome by landfill gas. So those are the kind of things  
21 that we're trying to investigate and avoid through the use  
22 of these programs.

23                               --o0o--

24           SUPERVISOR YOUNG: For the CIA program used an  
25 environmental services contract. We've had three separate

1 contracts to date to assist LEAs in the investigation of  
2 high priority disposal sites to determine if a site poses  
3 a threat to public health and safety and the environment  
4 from non-compliance with State minimum standards.

5 The objective of the environmental services  
6 contract is to perform office and field tasks related to  
7 investigating the conditions of a disposal site with  
8 respect to State minimum standards. The Scope of Work for  
9 the contract is included as Attachment 1.

10 The contract is utilized through a work order  
11 type system where work orders for specific tasks are put  
12 together and an estimate is done. And that's approved by  
13 CIWMB managers.

14 Funding for the environmental services contract  
15 will be over three fiscal years.

16 For FY 07-08, an allocation of \$10,000 will come  
17 from the IWMA.

18 For fiscal years 08-09, there will be a split  
19 allocation of 100,000 from the IWMA and \$100,000 from the  
20 Solid Waste Trust Fund.

21 For the last year of the contract, it will be  
22 \$90,000 from the IWMA.

23 The total contract is written not to exceed  
24 \$300,000.

25 The contract would begin in June of 2008 and end

1 in 2010.

2 --o0o--

3 SUPERVISOR YOUNG: This is just some images of  
4 the types of field tasks that we perform during these  
5 field investigations: Geophysical surveys, direct push,  
6 drilling, trenching capabilities, assist CIA and LEA staff  
7 in defining the limits, cover conditions, and  
8 characteristics of waste to determine if a site is in  
9 compliance with State minimum standards, and develop the  
10 necessary field data to support enforcement and remedial  
11 action at these sites.

12 Drilling capabilities are also necessary in  
13 developing gas monitoring networks to determine if  
14 landfill gas is migrating beyond the property boundaries.

15 Also, subcontractors are used to assist LEA and  
16 CIA staff in installing continuous monitoring systems for  
17 structures that are located on or near landfills where  
18 there's a potential threat for migrating landfill gas.

19 So that's the environmental services SIW.

20 --o0o--

21 SUPERVISOR YOUNG: For the lab services contract,  
22 SOW --

23 PROGRAM DIRECTOR RAUH: I actually only  
24 introduced the one contract, but can we just go into the  
25 second contract as they both --

1           CHAIRPERSON MULÉ: I don't see any problem with  
2 that. We can take questions on both. That's fine.

3           PROGRAM DIRECTOR RAUH: Thank you.

4           SUPERVISOR YOUNG: The lab services contract SOW  
5 is used to support CIWMB staff in obtaining chemical and  
6 physical analysis of samples taken during Board activities  
7 which may include research inspections and LEA technical  
8 assistance for inspections, investigations, and  
9 enforcement activities.

10           The Scope of Work for this contract is included  
11 in Attachment 1 of the item.

12           Like the environmental services contract, the lab  
13 services contract uses a work order type system to utilize  
14 laboratory analytical services. So the work order is  
15 prepared by staff and an estimate is done by the  
16 laboratory. And CIWMB managers sign off on the work  
17 orders.

18           The total funding for this contract will come  
19 from the IWMA for the three fiscal years of the contract.  
20 And that's specified on this slide.

21           The total contract won't exceed \$150,000. The  
22 contract would begin in April of 2008 and end in May 2010.

23                               --o0o--

24           SUPERVISOR YOUNG: Just kind of as a summary of  
25 what the statement of work is, it's basically the key

1 piece of this is that the lab has to be accredited by the  
2 Department of Health Services Environmental Laboratory  
3 Accreditation Program. Under that accreditation, they  
4 have to possess the personnel and equipment to be able to  
5 conduct standardized test methods to be able to perform  
6 EPA and ASTM test methods.

7 The contracting process will be done through an  
8 invitation for bid process with award going to the bidder  
9 on the lowest unit cost per analysis.

10 --o0o--

11 SUPERVISOR YOUNG: And just as a snapshot of the  
12 remaining balances for the current environmental services  
13 and lab services contracts, those are the amounts  
14 remaining until the new contracts are put in place.

15 --o0o--

16 SUPERVISOR YOUNG: Chair Mulé, Member Peace, we  
17 respectfully recommend that the Board adopt Resolution  
18 Number 2007-225 for the environmental services contract  
19 and Resolution Number 2007-226 for the laboratory services  
20 contract and authorize program staff to implement the  
21 environmental services contract using the request for  
22 qualifications process and laboratory services contract  
23 using the invitation for bid process.

24 We thank you for your consideration on these  
25 items.

1           CHAIRPERSON MULÉ: Thank you, Glenn.

2           Any questions for Glenn?

3           COMMITTEE MEMBER PEACE: Item two, the  
4 environmental investigation services, I'm just curious  
5 as -- doesn't really have anything to do with this item.  
6 But when I look at funding source, it has the Solid Waste  
7 Disposal Trust Fund. I was wondering, has the Board been  
8 reimbursed yet for the clean up of the Agoura fire?

9           PROGRAM DIRECTOR RAUH: We have provided the  
10 Department of Finance with all of the costs associated  
11 with the Board's efforts, contracting costs and travel and  
12 overtime costs, to the tune of about \$7.3 million. That  
13 request went in the end of last week, and Department of  
14 Finance has assured us they are going to give a very high  
15 priority to provide the fund allocation back to the  
16 Board's funds.

17          COMMITTEE MEMBER PEACE: Okay. And then kind of  
18 along those same lines of looking at the funding  
19 information in item three, I was just curious if the lab  
20 services are needed to characterize the waste at closed,  
21 illegal, and abandoned sites. I was just wondering why  
22 isn't the Solid Waste Disposal Trust Fund the fund source  
23 as it is in item two.

24          SUPERVISOR YOUNG: We use the environmental  
25 services contract at a faster consumption rate than the



1 laboratory services contract. Generally, the expenses  
2 associated with drilling and trenching and direct push and  
3 that type are expensive. Whereas, the lab services  
4 contract for the number of samples we take, we don't  
5 consume the lab services contract as quickly. And the  
6 demand also for the services in the environmental services  
7 contract are greater.

8 BRANCH MANAGER WALKER: This is Scott Walker,  
9 Cleanup Branch.

10 I would just like to add, too, is that in the  
11 investigation services contract, some of these projects  
12 they work on actually become 2136 cleanup projects. The  
13 lab services primarily for the most part deals with sites  
14 that are not going to qualify for cleanup program funding.  
15 So normally that's from IWMA.

16 And the lab service also uses quite a bit for  
17 active sites too, permitted facilities which are not going  
18 to qualify for the most part under the Solid Waste Cleanup  
19 Program.

20 COMMITTEE MEMBER PEACE: Just in the resolution  
21 where it said it's needed to characterize the waste at  
22 closed, illegal, and abandoned, I thought, okay, how come  
23 there isn't any money coming out of that fund. Okay.

24 CHAIRPERSON MULÉ: I just have a couple of  
25 questions on funding levels as well. You had a slide up

1 there with the remaining amounts. So my question is since  
2 I can't remember -- I think I was here when we approved  
3 the last funding cycle. I was just wondering are these  
4 being funded at the same level that they were in the  
5 previous cycle?

6 SUPERVISOR YOUNG: Yeah. Chair Mulé, the last  
7 contract was for -- I believe it was 200,000.

8 CHAIRPERSON MULÉ: And now we're going to 3?

9 SUPERVISOR YOUNG: Three hundred.

10 CHAIRPERSON MULÉ: On the lab services as well, I  
11 was wondering about that.

12 SUPERVISOR YOUNG: The lab services is being  
13 reduced. Again, that's based on the usage of the  
14 contract.

15 CHAIRPERSON MULÉ: And that was my point, is  
16 obviously you're adjusting it based on the need out there,  
17 historical need.

18 Okay. Any other questions, Board Member Chesbro?  
19 No.

20 All right. Let's take these items separately.  
21 We have Resolution 2007-225.

22 COMMITTEE MEMBER PEACE: I'd like to move  
23 Resolution 2007-225.

24 CHAIRPERSON MULÉ: I'll second that.

25 Donnell, would you call the roll?

1 EXECUTIVE ASSISTANT DUCLO: Members Peace?

2 BOARD MEMBER PEACE: Aye.

3 EXECUTIVE ASSISTANT DUCLO: Chair Mulé?

4 CHAIRPERSON MULÉ: Aye.

5 Since this is a Scope of Work only, we are  
6 putting this on consent.

7 So our next item --

8 COMMITTEE MEMBER PEACE: I'd like to move  
9 Resolution 2007-226.

10 CHAIRPERSON MULÉ: Second.

11 Could you call the roll, Donnell?

12 EXECUTIVE ASSISTANT DUCLO: Members Peace?

13 BOARD MEMBER PEACE: Aye.

14 EXECUTIVE ASSISTANT DUCLO: Chair Mulé?

15 CHAIRPERSON MULÉ: Aye.

16 Again, Elliot, I am correct in putting this on  
17 consent since this is for a Scope of Work only.

18 Okay. Thank you, all. Appreciate your  
19 participation. Thank you.

20 Our next item is Committee Item F, Board Agenda  
21 Item 5.

22 PROGRAM DIRECTOR RAUH: Thank you, Chair Mulé.

23 Item F is consideration of the city of Cerritos'  
24 request for an extension to the compliance order  
25 IWMA-BR07-02 regarding the due date for full local

1 assistance plan implementation.

2 Here to present the item is Michael Chen. And  
3 also in the audience we have a representative from the  
4 city of Cerritos. Mr. Chen.

5 MR. CHEN: Good afternoon, Madam Chair and  
6 members of the Committee. My name is Michael Chen of the  
7 Jurisdiction Compliance and Audit Section.

8 The Board issued the city of Cerritos a  
9 Compliance Order on February 13th, 2007. This Compliance  
10 Order requires the city to fully implement its Local  
11 Assistance Plan, also known as LAP, by December 31st,  
12 2007.

13 One of the key programs in the LAP is the  
14 residential curbside recycling and green waste collection  
15 program. To date, the city has been successfully  
16 implementing its LAP. However, negotiations with its  
17 hauler have delayed the implementation of the residential  
18 curbside program. It is staff's understanding that the  
19 city is finalizing negotiations with its hauler and is  
20 planning on presenting a contract amendment to the city  
21 council on December 13th.

22 Based on staff's analysis of the requested time  
23 extension --

24 COMMITTEE MEMBER PEACE: Hold on. Did it say  
25 that in the item? I thought they were going to bring it

1 forward either October 25th or November. What's this  
2 December?

3 MR. CHEN: This is the newest information.  
4 You're correct. That wasn't in the agenda item.

5 COMMITTEE MEMBER PEACE: Okay.

6 MR. CHEN: Based on staff's analysis of the  
7 requested time extension and supporting documentation,  
8 staff recommends adoption of Option 1. Included in Option  
9 1 is a one-year monitoring period which allows both staff  
10 and the city to monitor the progress of full  
11 implementation of the LAP.

12 This concludes staff's presentation. Staff and  
13 Mike O'Grady from the city of Cerritos are available to  
14 answer any questions.

15 CHAIRPERSON MULÉ: Thank you very much, Michael.  
16 Some questions of staff first.

17 COMMITTEE MEMBER PEACE: I have some questions of  
18 staff first. It did not say what county the city of  
19 Cerritos was in as it usually does. Is Cerritos in L.A.  
20 or Orange?

21 MR. CHEN: I believe Cerritos is in L.A. County.

22 SUPERVISOR O'SHAUGHNESSY: Supervisor.

23 It is L.A. County.

24 COMMITTEE MEMBER PEACE: If we can make sure we  
25 put that in the agenda item.

1           SUPERVISOR O'SHAUGHNESSY: Correction will be  
2 made. Did you want that correction for the Board or just  
3 next time?

4           COMMITTEE MEMBER PEACE: Just make sure future --  
5 it's usually in there. I don't know if it was overlooked  
6 this time.

7           Another thing that this item doesn't have that I  
8 was really disappointed that wasn't in here, what is their  
9 diversion rate now? What is it now and what has it been  
10 like for the last five years? Usually, there's that  
11 little box in there that says what it was in 2000, 2001.  
12 And somewhere it will say what the diversion rate is now.  
13 I didn't see that anywhere.

14          MR. CHEN: In 2003, their diversion rate was 43  
15 percent.

16          In 2004, it was 45 percent.

17          2005, it was 48 percent.

18          And 2006, we estimate it's 48 percent also.

19          DIVISION CHIEF VAN KEKERIX: So the 2005 and '06  
20 numbers will be preliminary diversion rates, because the  
21 Board staff hasn't brought those forward in a biennial  
22 review for your consideration.

23          COMMITTEE MEMBER PEACE: Okay.

24          CHAIRPERSON MULÉ: Any other questions, Board  
25 Member Peace?

1 COMMITTEE MEMBER PEACE: Not of staff.

2 CHAIRPERSON MULÉ: We do have one speaker. Mike  
3 O'Grady, please come forward, please.

4 PROGRAM DIRECTOR RAUH: While he's coming up, we  
5 will make sure the diversion rates are in future items  
6 along with the county of record as well.

7 CHAIRPERSON MULÉ: Thank you, Ted.

8 Would you please state your name for the record?

9 MR. O'GRADY: Yes. My name is Mike O'Grady. I'm  
10 the Environmental Services Manager with the City of  
11 Cerritos.

12 Good afternoon, Chair Mulé, members of the  
13 Committee as well as members of the Board.

14 First of all, I'd like to thank you for hearing  
15 our request to extent our Compliance Order this afternoon  
16 as well as thank your staff for helping us through the  
17 process of applying.

18 With your permission, I'd like to present some  
19 additional background to you. Take about two minutes  
20 here.

21 Since 2000, the city of Cerritos has relied on  
22 mixed waste processing to achieve its residential and  
23 commercial diversion. The city's current contract with  
24 its waste hauler requires that hauler to deliver all of  
25 our waste to a material recovery facility. However, the

1 agreement does not require a specific diversion rate of  
2 that material process at a material recovery facility.

3           As a result, our residential waste in Cerritos  
4 has been floor sorted over the past several years. To  
5 properly address this issue, the city found it necessary  
6 to negotiate a new contract with its waste hauler rather  
7 than simply amend its contract for a three-cart recycling  
8 system. This is a more time-consuming process and  
9 consequently the city was unable to complete the  
10 negotiations in time to adopt a new contract by the  
11 October 1st target date.

12           However, the city is confident that the due  
13 diligence that we've invested over the past couple of  
14 months will provide for a more effective system in the  
15 next seven to ten years.

16           For example -- and I'll outline outlining some of  
17 the progress we've made in our new contract. In addition  
18 to the residential three cart system, we have minimum  
19 diversion that's going to be required of the contractor.  
20 And that's a failure in our existing contract. It does  
21 not have that minimum diversion. We're going to require  
22 them to process a minimum percentage of our bin waste and  
23 a minimum percentage of our roll-off waste as well as  
24 achieve a minimum diversion percent of that waste that's  
25 processed.



1           The city also is going to require the hauler to  
2 transform to send for transformation a minimum number of  
3 tons annually. Essentially, that came up initially when  
4 we realized we weren't going to hit our January 1st or  
5 December 31st implementation date. We wanted some  
6 transformation to make up for the first couple of months  
7 of '08 where we weren't going to have the first  
8 residential three cart system in place.

9           In turn, we've decided to keep that  
10 transformation requirement in subsequent years as well.  
11 We'll also require our hauler to use alternative fueled  
12 non-diesel trucks, both our commercial route and our  
13 residential route. So we are very proud of that.

14           Now, with these new programs that we're going to  
15 be requiring contractually of our waste hauler, we  
16 estimate our diversion rate will increase to 56 percent in  
17 2008. It's very easy to calculate, because we know the  
18 minimum number of tons and minimum percentage they're  
19 going to have to divert under our contract with them.

20           Now late last month the city of Cerritos and our  
21 waste hauler came to a verbal agreement for a contract.  
22 However, the city was informed last week that early --  
23 this morning the waste hauler is going to be meeting with  
24 their legal counsel and develop a short list of items they  
25 still have a concern with.

1           On account of the upcoming holidays, the next  
2 regularly scheduled meeting of the Cerritos City Council  
3 is December 13th. It's our staff's goal to present a  
4 contract to our City Council on December 13th and fully  
5 implement our three cart system no later than March 31st.

6           This concludes my comments. And I'd be more than  
7 happy to answer any questions that you have.

8           CHAIRPERSON MULÉ: Great. Thank you. That's  
9 very good information for us to have.

10          And I'll suggest that if they continue to drag  
11 their feet or have questions about the contract, you can  
12 always put it out for bid. Sounds like you're definitely  
13 on the right track with your contract requirements.

14          MR. O'GRADY: And if I may, should negotiations  
15 not be successful, that could be a recommendation that we  
16 would make to our council. And unfortunately at that  
17 point, we would have to come back and seek additional  
18 time. But we're close in our negotiations and we are  
19 confident we're going to be able to make them work.

20          CHAIRPERSON MULÉ: Board Member Peace.

21          COMMITTEE MEMBER PEACE: I'm really having  
22 trouble with this. Here you say you still don't have a  
23 residential three cart system in place. It's almost 2008.  
24 AB 939 was 1989, and you still don't have a residential  
25 three cart system in place. I mean, that just

1 flabbergasts me, especially when in January 2003 was when  
2 you were put on the SB 1066 time extension that the Board  
3 granted you. You would have thought back in 2003 you  
4 would have started negotiations with your hauler for the  
5 residential recycling and green waste collection, because  
6 that was one of the key programs identified in your plan.  
7 And you're still not there.

8           In the item it says you're going to have that up  
9 before your City Council on October 25th and then maybe  
10 not until November 8th. And now you're telling me  
11 December 13th because your City council is not going to  
12 meet until then. Maybe they need to have an extra  
13 meeting. Because you said there's still a list of items  
14 that you're still negotiating. What if it gets to  
15 December 13th and those still aren't ironed out? And we  
16 keep giving you extension after extension. I'll really  
17 having a hard time with this.

18           You said in the July 23rd meeting, five months  
19 after your Compliance Order was issued the City Council  
20 then directed staff to negotiate their waste hauling and  
21 recycling program, that should have started as soon as you  
22 got the Compliance Order issued, if not clear back in 2003  
23 when you asked for the extension.

24           And then your response to the City Council's  
25 direction then staff hired a consultant. I mean, doesn't

1 our staff have ability to help the city without them  
2 having to take time to go out and hire a consultant that's  
3 going to take who knows how long to look at the different  
4 rates? I mean, it seems to me our staff has that  
5 capability. We've gone out and helped other jurisdictions  
6 before. I don't think you need to spend time and money to  
7 go out and hire an outside consultant.

8           Then we get a letter on October 17th asking for a  
9 time extension. And I said here it is November and you're  
10 still in negotiations. And you just told me that it's not  
11 going to be considered until December and there's still  
12 questions. I mean, I don't know how many time extensions  
13 and things you're going to ask us for. I mean, in fact, I  
14 don't I guess understand why staff is suggesting that we  
15 approve this.

16           CHAIRPERSON MULÉ: Well, perhaps staff may want  
17 to address that.

18           MR. O'GRADY: If I may. First of all, Ms. Peace,  
19 you're correct. We are one of the last cities to  
20 implement a three cart system. There still are cities who  
21 have implemented mixed waste processing or dirty MRF  
22 systems, and they've done it successfully. Unfortunately,  
23 our system has not been successful. So our city council  
24 has on July 23rd, as you mentioned, committed to a three  
25 cart system.

1           And if I can address your question, back in  
2 February when we received our Compliance Order, the first  
3 thing we did was we required our waste hauler to conduct a  
4 waste characterization study. That study really built the  
5 foundation for convincing our council that a three cart  
6 system was appropriate. The results of that study  
7 concluded that 31 percent of the residential waste  
8 generated in Cerritos are recyclables that can be targeted  
9 with a three cart system. And 32 percent is green waste.  
10 And so there was some delay there in getting proposals  
11 from our waste hauler for five different program options  
12 all of which were presented to council and they are  
13 committed at this point to presenting or to adopting a  
14 three cart residential system.

15           And in terms of the amount of time it's taken to  
16 negotiate -- and I've had this conversation with your  
17 staff. Unfortunately, it's very difficult to project the  
18 amount of time that negotiations are going to take. And I  
19 assure you that the city staff is working diligently  
20 toward coming to an agreement -- a ten year agreement is  
21 going to be proposed to council. And for a ten year  
22 agreement, we want to make sure that we have the right  
23 requirements in the contract to ensure that we're going to  
24 get the maximum diversion that we can.

25           CHAIRPERSON MULE: Well, I just want to say -- I

1 mean, the numbers are trending in the right direction. I  
2 mean, you are going up.

3 But I agree with Board Member Peace. I'm  
4 flabbergasted that 17 years after AB 939 was passed that  
5 there are still jurisdictions that don't have a basic  
6 curbside recycling program in a relatively urban area.

7 COMMITTEE MEMBER PEACE: Urban and wealthy area.  
8 We have jurisdictions all over here that have income  
9 levels less than half of what you have. Populations that  
10 have double, triple your poverty level, and they're able  
11 to do it. And to me, there's just no excuse.

12 CHAIRPERSON MULÉ: But I also understand, you  
13 know, that these things take time and that you are working  
14 with your hauler.

15 And again, I mean, I was joking earlier when I  
16 said, you know, if you don't get an agreement you might  
17 want to consider going out to bid. But I really wasn't  
18 joking. I mean, you know we've dragged this out long  
19 enough.

20 And like I said, while your numbers are trending  
21 in the right direction, I think the message is loud and  
22 clear from staff at least and from at least this Board  
23 member is that our primary focus is to look at programs  
24 and program implementation because the programs are what  
25 is going to give us the real diversion.

1           So, I mean, I agree with Board Member Peace that  
2   it's been a little bit too long and we'd like to see this  
3   happen faster. However, on the other hand, I really want  
4   to just move in the right direction, get you guys -- get  
5   you folks on the right track and let's make sure that you  
6   do get your contract in place.

7           Maybe you can report to staff every month on how  
8   you're doing with the contract negotiations. And if we  
9   find that they don't have their contract negotiated by the  
10  first of the year, we may ask you to come back. And we  
11  may reverse whatever division we make today.

12          So any other questions, Board Member Peace?

13          COMMITTEE MEMBER PEACE: No more questions.

14          CHAIRPERSON MULÉ: Do I have a motion?

15          COMMITTEE MEMBER PEACE: Well, the only motion I  
16  would make is to go for Option Number 3 and deny the  
17  request for extension to the deadline. That would be  
18  Resolution Number 2007-224, Option 3.

19          CHAIRPERSON MULÉ: Okay. And then what would the  
20  consequences of that action be, staff, if we deny the  
21  extension?

22          SUPERVISOR O'SHAUGHNESSY: If we deny the time  
23  extension when we come to December 31st of 2007, we will  
24  be in the position of bringing forward to you potentially  
25  a non-compliant jurisdiction that did not meet the terms

1 of their Compliance Order and potentially be fining the  
2 jurisdiction for not full implementation of their directed  
3 programs.

4 CHAIRPERSON MULÉ: Okay. Well, I would like to  
5 move Resolution 2007-224 with Option, 1 but we already  
6 have a motion on the floor. So there is no second. That  
7 motion then dies.

8 So I would like to move Resolution 2007-224. Do  
9 I have a second? No second.

10 Elliot.

11 STAFF COUNSEL BLOCK: Moves on to the full Board  
12 without recommendation.

13 CHAIRPERSON MULÉ: Thank you. Thank you for  
14 being here. Appreciate your input.

15 Our next item is Committee Item G.

16 PROGRAM DIRECTOR RAUH: Our next item is Agenda  
17 Item G, Discussion and Request for Rulemaking Direction on  
18 Noticing Proposed Revisions to the Rigid Plastic Packaging  
19 Container Regulations.

20 As you know, recent legislative changes really  
21 direct or require that we address changes in regulation  
22 both for clarity for the regulated community and also to  
23 improve the Board staff's ability to carry out the  
24 program. So we're here today with a proposal to request  
25 your approval to take these draft regulations out to



1 Office of Administrative Law for a 45-day comment period.

2 With that, I'd like to turn it over to Jerry  
3 Berumen to make the presentation.

4 CHAIRPERSON MULÉ: Good afternoon, Jerry.

5 (Thereupon an overhead presentation was  
6 presented as follows.)

7 MR. BERUMEN: Good afternoon, Madam Chair and  
8 Board members. As Ted stated, my name is Jerry Berumen  
9 with the Minimum Content Compliance Section. I will be  
10 presenting Committee Agenda Item G.

11 PROGRAM DIRECTOR RAUH: I didn't say it very  
12 well.

13 MR. BERUMEN: That's quite all right.

14 I'll be presenting Committee Item G, Board Member  
15 Agenda Item 6, which is Discussion and Request for  
16 Rulemaking Direction on Noticing Proposed Revisions to the  
17 Rigid Plastic Packaging Container Regulations.

18 --o0o--

19 MR. BERUMEN: I'd like to begin with some brief  
20 background on the informal rulemaking process. At its  
21 March 13th, 2007, meeting, the Board directed staff to  
22 begin an informal process for revising the RPPC  
23 regulations. Part of the process was convening an  
24 advisory group which included representatives from a  
25 variety of affected stakeholder groups such as product

1 manufacturers, local governments, and postconsumer resin  
2 suppliers with the intent to provide input and guidance  
3 during the informal process.

4           The proposed regulations are a result of two  
5 meetings of the advisory group; one workshop which  
6 included a larger stakeholder group, and three interested  
7 parties meetings.

8                               --o0o--

9           MR. BERUMEN: The original regulations were  
10 written in 1991 prior to the Board having any experience  
11 with executing the program and prior to the proliferation  
12 of plastic packaging.

13           Staff who wrote the regulations in 1991 could not  
14 have foreseen the growing universe of plastic packaging  
15 that is now affected by this law and subsequent inequities  
16 that the law developed.

17           As a result, the current regulations are not only  
18 burdened with obsolete provisions of the statute, but also  
19 with regulatory definitions which are outdated and which  
20 create confusion and an unlevel playing field for the  
21 regulated community.

22           Regulatory changes are needed to incorporate  
23 recent statutory changes, clarify key definitions, improve  
24 certification process, and improve overall readability and  
25 organization.

1 --o0o--

2 MR. BERUMEN: In passing the RPPC law, it was the  
3 intent of the Legislature to spur markets for plastic  
4 materials collected for recycling by requiring  
5 manufacturing to utilize increasing amounts of  
6 postconsumer recycled material in their rigid plastic  
7 packaging containers and to achieve high recycling rates  
8 for RPPCs.

9 --o0o--

10 MR. BERUMEN: In 1996, CIWMB staff conducted the  
11 first certification of individual companies. Since then,  
12 staff has conducted four more certification cycles  
13 certifying over 1200 product manufacturers. Through these  
14 five certification cycles, staff has gained valuable  
15 experience with the current RPPC regulations and the areas  
16 which need revision.

17 --o0o--

18 MR. BERUMEN: This slide is a listing of some of  
19 the key issues addressed through this informal process  
20 which are: Proposed definitions; alternative compliance  
21 method section; pre-certification process section;  
22 advisory opinion section. And I will detail each one of  
23 these sections as the presentation continues.

24 --o0o--

25 MR. BERUMEN: The proposed definition of

1 postconsumer material, which is Section 17943(i) in the  
2 proposed regulation, has been modified in order to be  
3 consistent with definition of postconsumer material in  
4 RPPC and plastic trash bag minimum content statutory  
5 language. Post-industrial material can no longer be  
6 credited to PSM use requirements.

7           Processors in the advisory group commented that  
8 this change will not result in post industrial material  
9 being disposed in the landfill. According to the  
10 feedback, little to no post industrial material is being  
11 disposed because there are established and viable markets  
12 for this material.

13                               --o0o--

14           MR. BERUMEN: Proposed definition for product  
15 manufacturer. There are several reasons why the proposed  
16 definition for product manufacturer has been changed. The  
17 proposed definition is that a product manufacturer is the  
18 producer or generator of the product offered for sale in  
19 California.

20           And factors for identifying the product  
21 manufacturer include: Ownership of the brand name;  
22 primary control over product design; primary control over  
23 container design. And there is no hierarchal list of  
24 factors.

25           First, the change is consistent with the Board's

1 strategic directive for producer responsibility.

2 Second, the change clarifies that the entity that  
3 owns the brand name for products sold or offered for sale  
4 in California is responsible for certifying compliance for  
5 the packaging it uses. These changes help the greening of  
6 the manufacturers' entire supply chain.

7 --o0o--

8 MR. BERUMEN: The proposed definition for  
9 reusable container. The proposed language is provided to  
10 clarify the statutory definition of a reusable package.  
11 Further proposed regulatory language, a reusable RPPC  
12 stores a replacement product sold by the same manufacturer  
13 and replenishes the contents of the original RPPC. A  
14 reusable RPPC does not permanently store the original  
15 product, because there is no replenishment of this  
16 original product.

17 --o0o--

18 MR. BERUMEN: The current definition of an RPPC  
19 specifies that to be regulated by the law, a container  
20 must first be made entirely of plastic, except for lids,  
21 caps, or labels, and have a capacity of at least eight  
22 fluid ounces, but no more than five gallons or their  
23 equivalent volumes, and maintain its shape while holding  
24 other products, and be capable of multiple reclosures and  
25 must be sold with an attached or unattached lid or cap.

1           The proposed definition of an RPPC was derived  
2 through past certification. CIWMB staff found that this  
3 definition -- that the current definition leads to  
4 inequities in applying the law. Staff has found examples  
5 of several types of containers which are almost identical,  
6 yet one may be regulated and one may not.

7           Examples include a plastic bucket with a metal  
8 handle is currently not regulated, where a plastic bucket  
9 with an attached plastic handle is currently regulated.

10          Another example is a container which is capable  
11 of multiple reclosure is regulated currently, but a  
12 similar container because it may be heat sealed is  
13 currently not regulated.

14          The proposed definition addresses those  
15 inequities by addressing packaging which include metal or  
16 plastic handles and other non-plastic incidental packaging  
17 elements, are capable of at least one closure which  
18 includes the manufacturing process, includes a relatively  
19 inflexible containers, but not film packaging. And they  
20 may be capable of being folded or collapsed.

21                               --o0o--

22          MR. BERUMEN: This slide presents a  
23 representation of the statutory definition of an RPPC  
24 which states an RPPC is capable of maintaining its shape  
25 while holding other products, including but not limited

1 to, bottles, cartons, and other receptacles for sale or  
2 distribution in the state.

3 Containers which are inflexible and containers  
4 which are relatively inflexible both maintain their shape  
5 while holding other products and are both regulated RPPCs.  
6 For example, both the bleach container and binder clip  
7 container maintain their shape while holding respectively  
8 the bleach and the binder clips. However, the plastic bag  
9 does not hold its shape when holding a product. The  
10 plastic bag on the other hand and other film plastic  
11 packaging being flexible would conform to the shape of the  
12 product it is holding and is therefore not an RPPC.

13 --o0o--

14 MR. BERUMEN: The proposed definition of source  
15 reduction deletes obsolete language and clarifies how an  
16 RPPC can demonstrate compliance through comparison of  
17 containers based on the definition of a particular type of  
18 RPPC and clarifies that similar RPPCs are like in shape,  
19 volume, and concentration.

20 For demonstrating source reduction through resin  
21 switching, statute prohibits packaging changes that  
22 adversely affect the potential for the rigid plastic  
23 packaging container to be recycled or made of postconsumer  
24 material.

25 In order to verify this compliance option, the

1 revised regulation proposes if a product manufacture wants  
2 to use this compliance option, they must supply the  
3 following substantiating documentation: A comparison of  
4 recycling rate data for both resin types; availability of  
5 postconsumer material for the resin types of appropriate  
6 quality for use in RPPCs; information supplied by the  
7 manufacturer; and any other relevant sources of  
8 information.

9 --o0o--

10 MR. BERUMEN: The language for the alternative  
11 compliance option was added verbatim from the statutory  
12 language and further clarity may be added through the  
13 permanent rulemaking process.

14 The law allows for California postconsumer  
15 material to be used in other products and packaging which  
16 may be credited toward company RPPC postconsumer material  
17 content compliance if the California postconsumer material  
18 is consumed directly by the manufacturer or by contractual  
19 agreement for the purchase and consumption of postconsumer  
20 material generated in the state and exported to another  
21 state for products or packaging. These actions must be  
22 taken during the same period for which the manufacturer is  
23 subject to the law.

24 Staff has added some documentation requirements  
25 regarding proof of the postconsumer material purchased.



1 And if additional documentation is necessary, then  
2 additional requirements can be added during the permanent  
3 rulemaking process.

4 --o0o--

5 MR. BERUMEN: The proposed pre-certification  
6 process. This would allow companies more time to prepare  
7 for potential certification of compliance to the Board.  
8 This addresses issues raised by the advisory group that  
9 companies need ample notice and time in which to come into  
10 compliance without the threat of immediate penalty.

11 Newly identified companies will be notified they  
12 have been added to the pool of regulated companies and  
13 will be asked to submit company contact information. And  
14 the company must also submit documentation showing it is  
15 not regulated if it wishes to be removed from the pool.

16 Under this proposed process, newly identified  
17 companies will have almost two years to come into  
18 compliance with the law before being asked to certify  
19 compliance. The new pre-certification process will allow  
20 the Board to notice a larger pool of companies informing  
21 them that they are subject to the California law. And  
22 this advance notice combined with increased education and  
23 outreach should significantly increase the percentage of  
24 companies that demonstrate compliance during a  
25 certification cycle. Staff will maintain a master pool of

1 companies which may be required to demonstrate compliance.

2 --o0o--

3 MR. BERUMEN: The pre-certification process  
4 proposes a hierarchy for selection of companies consisting  
5 of non-complying companies from the previous certification  
6 cycle, and a random selection of companies which were not  
7 previously required to certify, and companies that have  
8 previously certified compliance.

9 Selected companies shall be notified by March 1st  
10 of the measurement period that they may be required to  
11 demonstrate compliance to the Board.

12 --o0o--

13 MR. BERUMEN: This slide is a visual  
14 representation of an example cycle for any given  
15 certification beginning with rulemaking and outreach and  
16 then the pre-certification process in year one, the  
17 certification process which is in year two, and with the  
18 enforcement process being in year three.

19 --o0o--

20 MR. BERUMEN: Based on concerns from the advisory  
21 group, the proposed regulations establish a process for a  
22 manufacturer to request advisory opinions from the  
23 executive director of the Board regarding its compliance  
24 status.

25 Requests can only be submitted after receiving a

1 notice from the Board March 1st that the company may be  
2 required to demonstrate compliance for that measurement  
3 period. Requests must be submitted in writing within 60  
4 days of receiving the Board's notice, and the executive  
5 director must issue an opinion within 45 working days of  
6 receiving the request.

7 --o0o--

8 MR. BERUMEN: In conclusion, the proposed  
9 regulations will align the RPPC regulations with new and  
10 existing statute and Board strategic directives through  
11 key definitions and California postconsumer material  
12 compliance options. And the proposed regulations will  
13 also level the playing field by eliminating  
14 inconsistencies in the existing regulations.

15 --o0o--

16 MR. BERUMEN: The proposed changes will also help  
17 to divert RPPCs from disposal, support collection  
18 infrastructure and markets for postconsumer material, and  
19 promote producer responsibility.

20 Staff recommends the Board approve Option 1 and  
21 direct staff to notice a 45-day comment period for  
22 proposed revisions to the RPPC regulations.

23 Thank you for your time and consideration. I  
24 will be happy to answer any questions at this time.

25 CHAIRPERSON MULE: Thank you, Jerry. We do have

1 a number of speakers. So we will let them go first, and  
2 then take questions from Committee and Board members.

3 First speaker is Parham Yedidsion from Envision  
4 Plastics.

5 MR. YEDIDSION: Good afternoon, Chair Mulé,  
6 Member Peace, Member Chesbro, and Member Petersen.

7 There are other gentlemen here that are going to  
8 more eloquently talk point by point about why there are  
9 areas of the proposed changes to the regulations that do  
10 not necessarily meet with the statutory language. I'm  
11 just going to talk to you about a businessman in the state  
12 of California running a plastics recycling company with  
13 boots on the ground, with employees, and with a whole  
14 bunch of different customers and suppliers and what the  
15 reality of life is.

16 We've gone out there and invested millions of  
17 dollars from this same state of California who has given  
18 us loans by Integrated Waste Management Board and/or  
19 dollars that came through the Department of Conservation  
20 for extending our recycling capabilities. And we've gone  
21 based on certain statutes that we believed to have a  
22 certain intent.

23 Now we're having a game of ping pong being played  
24 between many different sides as to what those statutes  
25 really mean. I think at face value most of us can make a

1 look at the statutes and look at it and say the authors 15  
2 years ago, what was their intention. And that's what I'd  
3 like to hopefully ask you to look at: What was the  
4 intention? The intention was not to kill the recycling  
5 infrastructure. The intention was not to go ahead and  
6 eviscerate any kind of recycled content mandate. The  
7 intention was to bring about that to encourage further  
8 recycling, to encourage diversion, to encourage recycled  
9 content, and to encourage source reduction. All of those  
10 hold true. But not one at the expense of the other.

11           There are areas within the current proposals that  
12 will wipe that infrastructure out. I'm all in favor of  
13 source reduction, not at the expense of recycling. Not at  
14 the expense of recycled content.

15           The staff has chosen language that is very, very  
16 open in regards to interpretation. The mere fact that  
17 this is being discussed has several consumer product  
18 packaging companies out there canceling orders. They've  
19 been doing that for the last year. Combine that with the  
20 fact that there has been no certification whatsoever  
21 frankly, 2005 is still outstanding. There's no threat.  
22 There's no reason for anybody to comply.

23           It's funny. We talk about city of Cerritos  
24 having had 17 years to comply. Yet we don't talk about  
25 all of these companies knowing about this for 15 years.

1 We want to give them an additional two years. Maybe  
2 they'll hear it.

3 We are smart enough to know what's right and  
4 what's wrong. I want to appeal to you on that. I would  
5 highly ask of you please to allow for further discussions  
6 on this item rather than just moving it forward. There  
7 has not been any discussion on the ground between staff  
8 and recyclers and manufacturers. They have not seen the  
9 facility. They have not come out to take a look at the  
10 facility. They haven't looked at what it takes to recycle  
11 one pound of plastic, yet they make recommendations that  
12 are completely contrary to the original intentions. Thank  
13 you.

14 CHAIRPERSON MULÉ: Thank you. Our next speaker  
15 is William O'Grady.

16 MR. O'GRADY: Thanks very much for allowing me to  
17 address the Committee and the distinguished Board members.

18 First, if you'd allow me, I'm going to do some  
19 paraphrasing. But I'll be paraphrasing not from the  
20 presentation. I'm paraphrasing from the Agenda Item 6  
21 Board meeting. On page 1 of that agenda, Agenda Item 6  
22 for November 13th, under item history, second paragraph,  
23 the staff suggested these proposed regulatory  
24 modifications improve the clarity of the regulation,  
25 revise key definitions to make them consistent with

1 statutory requirements and legislative intent.

2           Again, on page 2 of the Agenda Item 6 under  
3 analysis, a, key issues and finding, staff again suggest  
4 that the intent of the law was to spur markets for plastic  
5 materials collected for recycling by requiring  
6 manufacturers to utilize increasing amounts of  
7 postconsumer material in their rigid plastic packaging  
8 containers.

9           Again under the informal rulemaking section on  
10 the same page, staff suggested the Integrated Waste  
11 Management staff are proposing revisions and amendments to  
12 the regulations to make them more clear and specific and  
13 to align the regulations with the intent of the law to  
14 support markets for postconsumer material.

15           And then again, finally, I think it's on page I  
16 believe 6. In the conclusion, staff again highlights the  
17 fact that these proposed changes will align the RPPC  
18 regulations with existing statute and eliminate inequities  
19 in the existing regulations. The changes are consistent  
20 with the language and the intent of the law to divert  
21 RPPCs from disposal, to support markets for postconsumer  
22 material. Integrated Waste Management Board staff  
23 believes these changes will improve implementation of the  
24 RPPC program.

25           Again, under environmental issues, the revised

1 regulations will help to increase the collection and  
2 recycling of postconsumer plastic in California across the  
3 nation.

4 And, finally, under program long-term impacts,  
5 last bullet point under the revised regulations will  
6 improve the RPPC program by increasing the demand for  
7 postconsumer resin.

8 Unfortunately, Talco Plastics feels that the  
9 proposed revisions to the regulations are going to achieve  
10 the exact opposite.

11 Talco Plastic participated in the interested  
12 parties meetings and workshops, and we're extremely  
13 disappointed in the fact that a lot of our recommendations  
14 and suggestions were not adopted, as were I guess most of  
15 the interested party participants. We're not alone in  
16 that category.

17 And I do believe that as a major stakeholder in  
18 the state of California, as one of the largest  
19 postconsumer recyclers in California, along with Envision  
20 Plastics, who you heard from earlier, we believe that --  
21 or I think Talco believes that these proposed regulatory  
22 revisions add to cloud the issue as opposed to clearing up  
23 issues and adds confusion in terms of interpretation of  
24 statute.

25 I'd like to go back to page 2 on the agenda.



1 Just as an example from a standpoint of confusing the  
2 issue, staff indicates that the statutes as 743 and 1344  
3 allow product manufacturers to credit the use of any  
4 California postconsumer material in other products and  
5 packaging towards the 25 percent recycling content  
6 compliance option under the RPPC law.

7           We're still not sure -- although we've had  
8 discussions, we're still not sure whether that's intra or  
9 inter company. That hasn't been made clear, although you  
10 were given a presentation this afternoon.

11           And again, we're not also sure if there is a  
12 tradable credit option here outside the corporate umbrella  
13 from the standpoint of maybe trading credits to companies  
14 that manufacture regulated containers so they don't have  
15 to include minimum content in their regulated containers.  
16 We're hoping that doesn't imply that these might be  
17 Chinese companies as well.

18           BOARD MEMBER CHESBRO: Madam Chair, excuse me for  
19 interrupting, but I'm going to use this opportunity as the  
20 author of the alternative compliance legislation to make  
21 unambiguously clear that the intent of the legislation --  
22 and I'm sorry that the language apparently has not been  
23 clear enough for staff to be able to interpret it this  
24 way. But I'd like to make it absolutely clear from all  
25 the discussions, all the Committee hearings, and the

1 language that we were not proposing a global trading  
2 program akin to the carbon trading concept.

3 Now, it might not be a bad idea if we had an  
4 endless budget and all the time in the world to try to  
5 figure out how to make it work. But clearly we're not  
6 there. And so the intent I think was understood by all  
7 parties to the discussions of the legislation was it be  
8 within related companies that are somehow jointly owned or  
9 connected legally.

10 And so when we get to the portion where we're  
11 suggesting the actions of the Committee, I'm going to ask  
12 that the Committee give direction to staff to make that  
13 absolutely clear that we're not talking about trades  
14 between companies. We are talking about trades within  
15 related companies.

16 CHAIRPERSON MULÉ: Boy I'm glad you're here on  
17 the Board. Thank you.

18 BOARD MEMBER CHESBRO: Sorry to interrupt you.

19 MR. O'GRADY: Board Member Chesbro, I thank you  
20 very much for making that clarification and entering it  
21 into the record. Thank you.

22 CHAIRPERSON MULÉ: Continue, Bill. Sorry.

23 MR. O'GRADY: Thank you, Ms. Mulé.

24 In addition, from a source reduction standpoint,  
25 Talco finds in particular with regard to the permanent one

1 time ten percent reduction compliance option, Talco  
2 Plastics feels it would be extremely difficult for this  
3 Board to -- almost impossible to achieve the 50 percent  
4 diversion rate or to even remotely reach that rate if the  
5 regulatory changes de-emphasize minimum content and  
6 replace recycling with reduction.

7           Additionally, the interpretation in the RPPC from  
8 a source reduction standpoint should not allow for a  
9 switching of resins that produces less benefit than the  
10 one currently produced with recycled content. In fact,  
11 Talco believes this is not a fact-based option. And  
12 actually this option of resins switching actually the  
13 statute becomes more lenient than the intent of the  
14 Legislature.

15           And also just to add insult to injury I guess --  
16 apologize to the staff for that. I know they worked  
17 extremely hard on this as well. But neither a  
18 reduction -- a ten percent reduction nor a resin switch --  
19 a switching of resins contributes much to the lowering of  
20 greenhouse gas emissions which has been referenced under  
21 the environmental issues of the Agenda Item 6. Staff  
22 suggests that -- pardon me. Staff suggests that as  
23 studies have shown plastic recycling conserves energy and  
24 resources while also reducing greenhouse gas emissions.

25           I want to make it clear that in the language here

1 we support that, yes, plastic recycling does reduce  
2 greenhouse gas emissions. But a ten percent reduction or  
3 a resin switch does very little for greenhouse gas  
4 emissions -- lowering greenhouse gas emissions.

5           Parham made it clear and I'd like to reiterate  
6 that nobody is here to debate the benefits of source  
7 reduction. We all recognize that that is a strong and  
8 effective mandate. However, pursuant to Section 42300  
9 under statute, and I quote, "It is not source reduction if  
10 changes adversely effect the potential for container to be  
11 recycled or to be made from postconsumer material."

12           And as a result, the landmark RPPC legislation  
13 declares that it is critical that stable in-state markets  
14 be developed. And that it is essential that stable  
15 markets exist. And that is the intent of the Legislature  
16 to spur markets for plastic materials collected for  
17 recycling.

18           It is Talco's position that the proposed  
19 regulatory changes to the RPPC law adversely effect the  
20 potential for containers to be recycled or made of  
21 postconsumer material. These changes will not enhance  
22 plastic recycling or create a demand for postconsumer  
23 material. The result of these changes will have a direct  
24 impact on Talco's long-term sustainability and places in  
25 jeopardy the Integrated Waste Management Board's

1 50 percent diversion mandate.

2 As a representative of a company in California  
3 engaged in the business of reclaiming and processing  
4 plastics for recycling, Talco feels strongly that more  
5 work is necessary. More specifically, Talco asks this  
6 Committee to further consider the views of the recycling  
7 community. Talco recommends that the Board approve Option  
8 2 and direct staff to extend the informal review and  
9 comment period to allow for additional stakeholder input.

10 Thank you very much for this opportunity, Chair  
11 Mulé.

12 CHAIRPERSON MULÉ: Thank you.

13 Our next speaker is Randy Pollack

14 MR. POLLACK: Thank you, Madam Chair, members of  
15 the Committee. My name is Randy Pollack. I'm here on  
16 behalf of several product manufacturing companies and also  
17 several container manufacturing companies.

18 First of all, I'd like to say thank you to the  
19 staff for the hard work they've put into the process.  
20 It's been a lot of work, especially on their part, in  
21 setting up the interested parties meetings, sending out  
22 the documents and drafting the regulations.

23 Having said that though, I believe as the couple  
24 other gentlemen just mentioned that we don't believe that  
25 it's the opportune time to bring this measure before the

1 complete Board. We believe more discussion is necessary.  
2 We believe there are issues with the proposed regulations  
3 that need to be flushed out. And I'd like to recite a  
4 couple issues that I see that's facing product  
5 manufacturers.

6 First, I'd like to start with a quote. The quote  
7 is, "The law as written is ambiguous and embraces a  
8 universe no one intended to be regulated. Therefore, it  
9 is necessary to clarify in the regulations which type of  
10 rigid plastic packaging containers are subject to the  
11 law."

12 Now that wasn't contained in a letter I sent to  
13 the Board. This was part of the Statements of Reasons  
14 that were submitted back in 1994. I think what that  
15 demonstrates is when this law was passed, they did not  
16 want to include the whole wide range of containers. Back  
17 then we did not have the clam shells, for example, that we  
18 have today.

19 I think what the staff was looking at that time,  
20 what can we do to manage this program. I believe at that  
21 time they were probably looking at the containers or  
22 certain cartons that had caps and lids on them. That was  
23 an easily identifiable container they could work into the  
24 system.

25 What we have here is that the initial language

1 was recloseable containers. Staff has now increased this  
2 to -- expanded this out to all containers. Basically on  
3 the premise that this would result in inconsistencies that  
4 are out there that you have several containers. One may  
5 be recloseable. One may not be recloseable. Where are  
6 these containers? All these are mainly -- besides the  
7 metal handles on buckets -- are in the clam shell area.  
8 And I believe that this is the area that we need to get  
9 our hands around. It is very difficult for my  
10 understanding to have postconsumer resin in clam shells  
11 because of clarity issues.

12           It also is very difficult for a product  
13 manufacturer to demonstrate they're in compliance by  
14 source reduction. Because usually when they introduce  
15 their product, they're introducing it at the lightest  
16 weight possible.

17           Also it's my understanding there are issues with  
18 postconsumer resin that sometimes there's discoloration  
19 when you use it. That it may be a blue or a yellow. And  
20 then also there's a clarity issues. So that is one  
21 concern that we had that we believe there needs to be more  
22 discussion on.

23           Additionally, we believe that further discussion  
24 has to go on regarding the whole flexible versus  
25 inflexible. Staff made a presentation today basically

1 saying that all containers are included under this act,  
2 except a plastic bag.

3 My argument back would be I don't believe a  
4 plastic bag is even a container. So how do we determine  
5 when we're looking at this law initially that we're  
6 talking with caps and lids. A plastic bag I don't believe  
7 was a container that was ever thought of underneath by the  
8 staff back in the early 1990s as being an inflexible part  
9 or flexible part of this law.

10 A couple other issues I'd like to bring up  
11 briefly, because I know we have several other speakers, is  
12 one we'd also like to review the reuse definition. We  
13 believe, for example, out there we have the buckets. Say  
14 for example five gallon bucket that we believe is reused.  
15 That may not be reused for that same item, but many of  
16 them will reuse it for other storing materials. For  
17 example, garden tools.

18 And I believe there's credence to this argument,  
19 because you can go to Orchard or Home Depot and they're  
20 selling these empty buckets. They're selling them.  
21 They're selling a lot of those buckets. We'd ask maybe  
22 another look at that provision also be looked at.

23 And, finally, I just want to mention about the  
24 switching of resin types. We are in a predicament here  
25 because the way people can interpret or look at the law



1 there can be several interpretations. We believe that if  
2 you can switch a resin type and save 20 percent or reduce  
3 the weight of that container by 20 percent, that is an  
4 enormous savings over a container manufacturer when  
5 they're manufacturing millions of containers.

6 We're not quite sure how the law and the  
7 regulations are working, because basically it says if you  
8 switch from one resin to another, it has to be as  
9 recyclable as the other. The question is is if there is a  
10 market out there that it is being recycled, how do we keep  
11 increasing that recyclability? Now the way to do that is  
12 switching more over into that area so that we can create a  
13 recycling stream.

14 So with that, we would support Option 2 that we  
15 would have further discussions of this and that we look  
16 forward to working with the Board. Thank you very much.

17 CHAIRPERSON MULÉ: Thank you.

18 Our next speaker is George Larson.

19 MR. LARSON: Thank you, Madam Chair, members.  
20 This has been a long saga here to the plastic packaging  
21 issue. I think it was American Plastics Council was my  
22 first client in 1994. I promised I would have this  
23 resolved before I retired, but today I'm not too sure.

24 I have a couple of -- get the short list out  
25 first. A couple of things I think are very positive in

1 the regulations.

2 And the advance notice thing is the most  
3 important thing. That companies previously were informed  
4 two years after their reporting period. This advance  
5 notice will go a long way to making your work a lot easier  
6 in evaluating companies and will make the regulated  
7 community more aware of what they need to do.

8 I will echo but not elaborate on some comments  
9 made about the expansion of the universe of containers  
10 that are going to be included as a result of these new  
11 regulations. And I bring the issue of the availability of  
12 postconsumer resin today in the marketplace as a  
13 challenge.

14 The PET market, for example, failed in 2005 and  
15 2006 to meet its demand. Now it may be caused by excess  
16 dollars being thrown on the table for foreign markets.  
17 But here in California we haven't been able to meet that  
18 challenge. If we expand through just singly looking at  
19 the issue of heat sealed containers, expand significantly  
20 the demand now with the new regulations on postconsumer  
21 PET to meet that need. We can't meet them today. I don't  
22 think they'll be met with the expansion of the  
23 regulations.

24 Now, that may result in just more companies being  
25 fined. And I don't think that's the intent of the law. I

1 think we have come a long way in increased diversion and  
2 recycling of plastics along through the years.

3 My most significant issue is really a definition  
4 change for the post industrial scrap recycling definition.  
5 And I'm going to cite out of page five of the Board's  
6 agenda item a reference to statute which said, "Statute  
7 excludes post-industrial material commonly reused within  
8 the original fabrication and manufacturing process."

9 And I think that's quite clear. The way I  
10 interpret that as we always have in the past is if I have  
11 a company that's making widget and punching out little  
12 holes not part of the final product, you pick those holes  
13 back up. You put them on the front end of the  
14 manufacturing process. They go through the process and  
15 there's no credit for that.

16 But there are situations where products are  
17 either become obsolete, they're expired products. They're  
18 over runs or for some reason they can't be used. If a  
19 product manufacturer finds themselves in that situation  
20 and has those containers to do something with, I would  
21 argue that sometimes they have been disposed. But if a  
22 company wants to buy them, it might be Talco, it might be  
23 Illinois Tool Works, my client, and gets them back into  
24 the economic main stream, I think there should be some  
25 credit given for that.

1           And I want to go to Illinois Tool Works  
2 specifically. That company recycles over 14 million  
3 pounds of California sourced plastic resin for the  
4 manufacture of new products and packaging. Under the  
5 strict interpretation and the change of the regulations to  
6 define post-industrial waste, not one pound of that will  
7 be eligible.

8           So I think I'm representing a company that works  
9 hard to try to establish the highest recycling and  
10 environmental standards. They're doing this job. They're  
11 going to get nothing out of this. I think that is just a  
12 miscarriage of the intent and the good work of many  
13 companies in addition to Illinois Tool Works.

14           I have a couple more short items and I'll be  
15 quiet.

16           The other issue is enforcement equity. I've  
17 raised this a number of times. I need to go on the record  
18 that sometimes I refer to this as the 1250 company law  
19 rather than the RPPC law. Because once you get in the  
20 barrel, you're not going to get out. And the new  
21 hierarchy that's established by the regulations has three  
22 tiers.

23           One that if you fail to make certification or  
24 demonstrate compliance, you stay in the pool.

25           Second is a random selection of new companies. I

1 think that should actually be first.

2           The third, if you were in the pool and you were  
3 found to be certified and in compliance with the law,  
4 you're also on the priority list to be called up again. I  
5 don't know the exact number of the thousands and thousands  
6 of companies in California that are subject to this law.

7           I did bring in a series of containers that ITW  
8 makes a similar product that were not regulated and our  
9 product was. So there's still some issues about  
10 enforcement equity.

11           And then my last comment and I appreciate your  
12 indulgence is just the issue of international importation  
13 of products and how to equitably treat certifications from  
14 companies or persons outside of the United States. I  
15 think we have a way to track them in the country. But  
16 from foreign countries that just sent in a piece of paper,  
17 I could write one that said my containers are in  
18 compliance with this law and there's no way to check it.

19           Thank you for your time. Questions?

20           CHAIRPERSON MULÉ: Thank you.

21           Our final speaker is Steve Alexander.

22           MR. ALEXANDER: Thank you, Chair Mulé, Board  
23 Member Peace, Mr. Petersen, Mr. Chesbro, staff. Thank you  
24 very much.

25           I apologize for being the last one today in

1 keeping you between your appointed other duties. I will  
2 try to be brief.

3 And to the staff, really, I'm here on behalf of  
4 the Association of Postconsumer Plastic Recyclers. We're  
5 the folks where the rubber meets the road. When it comes  
6 to plastic recycling, we take the material that's been  
7 collected and turn it into something else. We represent  
8 90 percent of the capacity of that in north America,  
9 Mexico, Canada, and the United States.

10 Two of my brethren testified earlier today and  
11 stole the bulk of my thunder. But I have a couple things  
12 I'd like to point out, not the least of which I think is  
13 this concern that we have based upon what these  
14 regulations and these proposed changes do to the original  
15 intent of the law. And not the least of which what it  
16 will do to the plastics recycling community in terms of  
17 the demand for their products and the sustainability of  
18 that industry, which frankly particularly on the high  
19 density polyethylene side, this law started and  
20 established and created the demand for back in 1996.

21 One of the first things we would pose a question  
22 in that given that this law has essentially become a de  
23 facto national/international standard and has created this  
24 industry, why would we be doing something that essentially  
25 could eviscerate demand for that industry and post

1 consumer high density material.

2 We recognize that source reduction is always the  
3 priority in terms of the diversion under this RPPC law.  
4 But I think we need to look at source reduction and what  
5 in fact is it really.

6 When we talk about reducing a container, a  
7 plastic bottle by ten percent and giving it a lifetime  
8 exemption for that one-time compliance from the compliance  
9 with this law, what is that doing? Is that reducing the  
10 amount of virgin material we're going to be needing over  
11 the lifetime of the law? Possibly. But when you compare  
12 it to a continual demand for postconsumer material that is  
13 diverted from the landfill to be placed in those  
14 containers on a consistent basis in order to comply with  
15 this law, we seem to think that possibly recycled content  
16 requirements would divert more material from your landfill  
17 than a one-time lifetime exemption for simply reducing  
18 your product by ten percent upon introduction or compared  
19 to what it was twelve months ago.

20 Let me give you this quick anecdote. I serve on  
21 the Sustainable Packaging Network for Wal-Mart  
22 representing the plastics recycling industry. And if you  
23 go to those wonderful meetings in Bentonville, Arkansas,  
24 which I know one of the staff members are going to join us  
25 December 4th and 5th, you heard these buyer success

1 stories. And one of the most interesting buyer success  
2 stories that we heard back in last March was their Suave  
3 shampoo bottle, which is the most successful, most sold  
4 product in their beauty health aids of all the 210,000  
5 items they carry in their super centers, they asked the  
6 product manufacturer -- the container manufacturer to see  
7 if they could reduce the packaging in that material in  
8 that container. And in a very short period of time, that  
9 container was produced using 16 percent less plastic  
10 material than it had been previously, which saves 750,000  
11 tons of plastic resin a year and about equivalent of  
12 15,000 tons of greenhouse gas emissions. That's a success  
13 story.

14           The point I'm making is that ten percent source  
15 reduction should not be looked at as the height at which  
16 we seek to attain. If there's a way to deal with this, we  
17 need to look at ten percent as the bar which we should be  
18 trying to jump over. Because in fact the source reduction  
19 options which are placed before us here in this piece of  
20 legislation really mandate if you're a consumer product  
21 company that you will not utilize recycled content in your  
22 material in any way, shape, or form. You would be foolish  
23 to. If I could take my Tide bottle at 64 ounces that  
24 right now maintains I need to have 25 percent recycled  
25 content in it, if I concentrate that product by just ten



1 percent delivering ten percent more servings, I think the  
2 assumption is that that package will be reduced a like  
3 amount.

4 Well that's not what this law says. What this  
5 law is telling us is that Proctor and Gamble can continue  
6 to produce a 64-ounce container made of entirely virgin  
7 material which can go to a landfill, perpetuity, and be in  
8 full compliance with this law. It seems to me that these  
9 are the types of things which are incongruous in terms of  
10 what we're trying to do.

11 We have a 50 percent landfill diversion mandate  
12 here. And it just seems to me that, you know, we want to  
13 work towards that. I fail to see how the recommendations  
14 that we have here -- and granted the staff is constricted  
15 by statute in certain areas. They've been telling me  
16 they're constricted. But we would look for the  
17 opportunity to try to work with them to deal with these  
18 sorts of issues in the marketplace.

19 I mean, another issue -- and I'll be very  
20 brief -- deals with resin switching. And we feel  
21 frankly -- and I'll be very frank with this. We have a  
22 legal opinion that we've developed that says the original  
23 intent of the statute does not allow resin switching of  
24 plastics under one broad material category. And that the  
25 original statute actually defines individual resin

1 categories as different materials. And in the  
2 marketplace, the fact of the matter is that polystyrene  
3 reason is a separate PET as paper is from glass. So the  
4 ability to switch from one resin to another is really an  
5 issue that needs to be studied a lot further.

6           Let me give you a very simple example. We have a  
7 high density product -- let's pick on Tide again -- that  
8 right now has a 25 percent recycled content in it. By  
9 simply switching that container to, say, a polypropylene  
10 bottle one time, then that 64-ounce bottle made of virgin  
11 polypropylene new virgin resin can continue to comply with  
12 this law simply because it was switched from a material  
13 that had recycled content in it, that has an established  
14 collection diversion program, and to one that frankly the  
15 diversion program, if there is one, is in its embryonic  
16 stages.

17           I happen to sit on the advisory committee of a  
18 group called Polypropylene Recycling Initiative. Believe  
19 me, we're struggling to try to get polypropylene up and  
20 running. And we'd love to get a collection program and a  
21 separation program out there. Today, like just like  
22 polystyrene is to PET, just like PVC is to PET, it is a  
23 contaminant in the recycling stream for that material.

24           Let me be quite there, because I can go on and I  
25 don't want to take any more of your time. We have

1 provided written comments to the Committee. We have  
2 provided additional written comments today. And I'd be  
3 happy to answer any questions if anyone asked.

4 But to be quite honest, I know there's a desire  
5 to move this on. But we would respectfully request that  
6 you consider leaving this as Option 2 to allow us to try  
7 to work some of these things out with staff.

8 Thank you. I would be happy to answer any  
9 questions.

10 CHAIRPERSON MULÉ: Thank you.

11 I'm sure we all have some questions here. So  
12 I'll get started with you Board Member Peace.

13 COMMITTEE MEMBER PEACE: I just have a question  
14 of staff.

15 As we have gone through these certifications in  
16 the past, can you tell me how much source reduction has  
17 occurred with resin switching in the past?

18 MR. BERUMEN: This is Jerry Berumen.

19 We have never had a company comply through resin  
20 switching.

21 COMMITTEE MEMBER PEACE: So you've never had one  
22 comply through resin switching. So I would think if a  
23 company wanted to resin switch to save money or to make a  
24 better container, they would have already done that by  
25 switching resins. So when you say no one has done that so

1 far just on their own, that to me tells me if they're  
2 going switch resins after we say it's okay that they're  
3 solely doing this to get around the law. Does that make  
4 sense?

5 SUPERVISOR LEAON: This Mike Leاون, Supervisor,  
6 Minimum Content Compliance Section.

7 First, I should probably make an attempt to  
8 address the statute. And the statute does prohibit  
9 switching material types and counting that towards source  
10 reduction. For example, if you take a plastic container  
11 and you switch to an aluminum, paper, or other material  
12 type, obviously it's no longer a plastic container and no  
13 longer regulated RPPC. However, if a manufacturer were to  
14 switch from one plastic resin to another plastic resin,  
15 it's still an RPPC. So the compliance options are  
16 available to that company including source reduction.

17 Now the statute also says that packaging changes  
18 that adversely effect the ability of the container to be  
19 recycled or to be made of postconsumer material are  
20 prohibited. So on that basis, switching from PET or high  
21 density polyethylene to another resin type for all  
22 practical purposes it's not allowed under the statute,  
23 because obviously PET and HDPE of more recyclable. And  
24 those containers are more able to be made of postconsumer  
25 material.

1           CHAIRPERSON MULÉ: They would not get the source  
2 reduction credit?

3           SUPERVISOR LEAON: That's correct. And we have  
4 had requests for that. And we have asked for the  
5 documentation to substantiate that the resin change won't  
6 have that adverse effect. That documentation hasn't been  
7 forthcoming.

8           BOARD MEMBER CHESBRO: So may I? Are you saying  
9 that the concern that's been raised is not valid. That in  
10 fact the regulations as you've drafted them would not  
11 allow what the plastic recyclers have said they would  
12 happen.

13          CHAIRPERSON MULÉ: I think the current regs state  
14 that, correct, the current statute.

15          COMMITTEE MEMBER PEACE: That's what I'm  
16 wondering why did we change the definition of material  
17 type to exclude the individual plastic resins when to me  
18 it seems the statute seems to prohibit the substitution of  
19 any material.

20          SUPERVISOR LEAON: Well, we made that change to  
21 address the situation that I was attempting to describe.  
22 Or if you switch from one plastic to another plastic, it's  
23 still an RPPC. But if you switch to a different material  
24 type other than plastic, it's no longer -- the package is  
25 no longer an RPPC. Therefore, it falls outside of the

1 requirements of the law.

2 BOARD MEMBER CHESBRO: I thought I just heard you  
3 say that the source reduction credit can't be applied by  
4 switching material types under the proposed regs.

5 SUPERVISOR LEAON: Let me clarify that point. It  
6 is allowed. A manufacturer can change the resin type of  
7 his container, but it still has to comply with one of the  
8 compliance options. And if it's going to comply through  
9 source reduction for that new container, it can't  
10 adversely effect the potential of that container to be  
11 recycled or made of postconsumer material.

12 CHAIRPERSON MULÉ: So, for example, if you have a  
13 container that's made from HDPE and then you switch that  
14 to polypropylene resin type and it's 20 percent lighter,  
15 you will not get the source reduction credit, if you will,  
16 under current law; right?

17 SUPERVISOR LEAON: That's correct.

18 CHAIRPERSON MULÉ: So that's current law that  
19 they can't -- if polypropylene which, you know, represents  
20 one or two percent of the total plastics, there's really  
21 no infrastructure for recycling. We all know that. Then  
22 that company, that manufacturer, cannot get the credit,  
23 the source reduction credit. So really currently there's  
24 no incentive for them to switch, because they're not going  
25 to get that credit and be in compliance with the law.

1           SUPERVISOR LEAON: That's correct. Yes.

2           BOARD MEMBER CHESBRO: As a practical matter  
3 though it seems like at least as I read the section  
4 talking about how you would compare the two recycling --  
5 the question of recyclability for the current container  
6 material and the material they're switching to, it's  
7 pretty vague. And I'm concerned that and I think the  
8 recyclers are concerned that it in fact would constitute  
9 an invitation to somebody to give it a try.

10           It says that -- I can't remember what page it's  
11 on. I don't have it open to that section. But it sets up  
12 a process by which the Board can determine I think that in  
13 fact the material being switched to is recyclable.

14           CHAIRPERSON MULÉ: Page eleven.

15           BOARD MEMBER CHESBRO: From my standpoint, if in  
16 fact it's not practical -- and I totally buy the argument  
17 that a container -- if you can get the containers out of  
18 the landfill through recycling and create a market, that  
19 beats the heck out of giving them one-time lifetime source  
20 reduction and keeping continue to send those containers to  
21 the landfill. It may be a type of source reduction, but  
22 it's incremental. It's partial at best. When we say  
23 source reduction, we're talking about me using a durable  
24 product opposed to something that has any chance of ending  
25 up in the landfill. Has multiple reuses, that is source

1 reduction.

2           And simply light weighting might constitute some  
3 small percentage of source reduction, but it's not source  
4 reduction on its face. So, I mean, even though Board  
5 Member Peace's question about to staff about whether or  
6 not it has been done was the answer, no, I think that  
7 either saying we don't do it explicitly because the  
8 statute says that or having a real clear standard, very  
9 high and very clear standard that demonstrates what  
10 recyclability of the container to be shifted to is going  
11 to constitute is my perspective on it.

12           CHAIRPERSON MULÉ: Question, Mike. The source  
13 reduction, is that currently -- that's permanent? Like  
14 once they get that option, that's permanent?

15           SUPERVISOR LEAON: That's correct.

16           CHAIRPERSON MULÉ: Is that --

17           SUPERVISOR LEAON: For that container and  
18 product.

19           CHAIRPERSON MULÉ: So is that in the law or is  
20 that in the regs?

21           SUPERVISOR LEAON: That's statutory provision.

22           CHAIRPERSON MULÉ: That's something we need to  
23 change statutorily.

24           So maybe we should start making a list of what we  
25 need to change in statute -- and I'm serious. Maybe we



1 really need to do that and look at what do we need to  
2 change in statute. Because I think our speakers have  
3 brought up a number of significant issues today we really  
4 need to address once and for all. If it needs to be  
5 addressed in statute, then let's look at what needs to be  
6 addressed in statute and do that there. And then what we  
7 can fix in the regulations, we can then try to fix in the  
8 regulations to the best of our ability.

9 BOARD MEMBER CHESBRO: So Madam Chair, this  
10 language on page eleven refers to the Board. It says,  
11 "The Board may review any information provided by the  
12 product manufacturer to determine if the package change  
13 adversely effects the potential for the rigid plastic  
14 packaging. Factors that the Board will consider shall  
15 include but are not be limited to" -- and that just all  
16 seems very, very general and ill defined and not nailed  
17 down in terms of what would be a recycling rate that would  
18 constitute -- I mean, is it the same recycling rate as the  
19 material it's being switched from? What does the Board --  
20 I mean, it's describing what information we could  
21 consider, but it doesn't establish a standard. And that's  
22 not sufficient from my standpoint. In addition to the  
23 issue of it not being lifetime.

24 CHAIRPERSON MULÉ: I agree with you. But again  
25 that's an issue that we need to deal with in statute.

1           BOARD MEMBER CHESBRO: In addition to dealing  
2 with it in statute, it makes me want to be even more  
3 conservative than I might be if it wasn't a lifetime  
4 determination about when we're going to allow this to  
5 happen, if at all.

6           BOARD MEMBER PETERSEN: Madam Chair.

7           CHAIRPERSON MULÉ: Yes, Board Member Petersen,  
8 welcome.

9           BOARD MEMBER PETERSEN: I'm going to agree with  
10 Westley on what he just said. And I agree on this  
11 re-visit the statute and change it. We have been messing  
12 around with this since 1994. And we have to listen to  
13 industry guys in recycling. This industry is not only  
14 tough, it's almost impossible to make this happen. This  
15 is the only industry that we have right now where we build  
16 infrastructure here. And we can't build any more paper  
17 mill -- or not can't, but we don't have the political will  
18 to do that.

19           So for me, I'm listening to the recyclers. And I  
20 went through this thing and I got dizzy trying to figure  
21 out what this is all about. I'm not taking anything away  
22 from staff. You guys are good at what you're doing. I'm  
23 confused.

24           But my point being is I really think that you're  
25 right. Statutory change has to happen to clarify this and

1 maybe we need to set some standards like Westley is  
2 talking about. Anyway, that's my chime.

3 CHAIRPERSON MULÉ: Thank you. Other questions,  
4 Board Member Peace?

5 COMMITTEE MEMBER PEACE: I think we all agree  
6 about needs to be statutory changes. We can't do that  
7 today.

8 So, I mean, what is it that we do today? To me  
9 it seems like adding in that part about material type and  
10 purpose of provision refers to categories such as paper,  
11 glass, aluminum, and does not refer to individual plastic  
12 resins. To me, that's really stretching what the statute  
13 says. Because you heard them say that the different  
14 resins are as different as glass and paper, the different  
15 kinds of resins. So to me material type would include  
16 differ resins. So it should not -- that part should not  
17 be in there. I don't think they should get source  
18 reduction by being able to change resin.

19 SUPERVISOR LEAON: Madam Chair, may I respond?

20 Staff is prepared to develop more specific  
21 language regarding documentation requirements under that  
22 option. As Board Member Peace pointed out, if we want to  
23 move forward with these regulations, I don't think we  
24 necessarily wanted to wait for the statutory change. So  
25 wanting to be responsive about the concern about getting

1 sufficient documentation, we can further revise this  
2 language to include more specifics.

3 BOARD MEMBER CHESBRO: Madam Chair.

4 CHAIRPERSON MULÉ: Yes, Board Member Chesbro.

5 BOARD MEMBER CHESBRO: As a very talkative and  
6 chatty non-Committee member with lots of ideas and  
7 suggestions --

8 CHAIRPERSON MULÉ: Your comments are welcome.

9 BOARD MEMBER CHESBRO: I think the simplest  
10 solution that deals with the lifetime problem and deals  
11 with the ambiguity of trying to determine, you know, what  
12 constitutes an adequate recycling rate to compare to the  
13 previous material is to just not allow it as -- the light  
14 weighting as a compliance option. And you if they want to  
15 switch and they want to comply by demonstrating that the  
16 new material meets the statute, fine. But I think it  
17 should be based on that, not on the idea that we're  
18 somehow providing incentive to light weight. So that's my  
19 suggestion actually is to -- and it's the cleanest way to  
20 deal with it.

21 STAFF COUNSEL BRANCH: This is Harllee Branch,  
22 counsel of the Board.

23 Just for clarification, are you saying we  
24 eliminate ten percent light weighting as a compliance  
25 option?

1           BOARD MEMBER CHESBRO: No. Resin switching is  
2 what I meant.

3           STAFF COUNSEL BRANCH: Okay.

4           BOARD MEMBER CHESBRO: Sorry I wasn't clear.  
5 Thank you for asking the question.

6           CHAIRPERSON MULÉ: That's in the law, isn't it?  
7 No.

8           BOARD MEMBER CHESBRO: I meant resin switching to  
9 accomplish the light weighting.

10          STAFF COUNSEL BRANCH: The statute just talks  
11 about --

12          BOARD MEMBER CHESBRO: I said the words  
13 inartfully there. I apologize.

14          STAFF COUNSEL BRANCH: In statute it only talks  
15 to prohibiting a change "material type" to achieve source  
16 reduction. There's a little bit of play in that language.  
17 The original draft of the regulations --

18          BOARD MEMBER CHESBRO: So you're saying what I  
19 suggest would be consistent with statute.

20          STAFF COUNSEL BRANCH: We could definitely look  
21 at doing that.

22          CHAIRPERSON MULÉ: Okay. So what we're saying --  
23 I just want to make sure we get this correct on the  
24 record. That we would eliminate resin switching as a  
25 source reduction compliance option. Is that correct?

1               STAFF COUNSEL BRANCH: That's something we could  
2 look at, yeah.

3               CHAIRPERSON MULÉ: Okay. Anything else, Board  
4 members?

5               COMMITTEE MEMBER PEACE: No. The resin switching  
6 thing was my main I guess concern, because a lot of things  
7 in there were good. The changes to clarify the language  
8 in the regs trying to level the playing field by  
9 including, you know, the heat sealed containers and by  
10 including like plastic containers so that you can't get  
11 out of it because you have a metal handle versus a  
12 different kind of handle.

13              The pre-certification process sounded like a good  
14 step. There's a lot of good things in here.

15              I think my main thing after hearing everybody  
16 speak was the resin issue. So if we can look at that  
17 again or just take it out or --

18              CHAIRPERSON MULÉ: Okay.

19              BOARD MEMBER PETERSEN: Madam Chair, I was  
20 listening to all the industry members, they all refer to  
21 Option 2 for some more time to work this out with staff.  
22 And -- I don't know. Another non-member of the Committee  
23 I'm just chiming maybe that might be something we want to  
24 look at.

25              COMMITTEE MEMBER PEACE: Option two is okay, but

1 does that open it up to look at everything again? Because  
2 I don't think we want -- at least from -- maybe some other  
3 Board members do. But from my point, I don't want to look  
4 at everything again including all buckets no matter what  
5 kind of handle they have.

6 To level the playing field, that's okay with me.  
7 I don't think we need to look at that again.

8 Including the heat sealed containers to  
9 landfills, to include them I don't think is something we  
10 need to keep going over and over again.

11 BOARD MEMBER CHESBRO: This is not the formal  
12 rulemaking process. This is the release of the draft  
13 regulations.

14 CHAIRPERSON MULÉ: This is requesting that the  
15 Board put these out for 45-day comment period.

16 BOARD MEMBER CHESBRO: My point is that public  
17 comment still has the ability to affect the content of  
18 these regulations. What we're talking about is what we  
19 want to put out on the street.

20 PROGRAM DIRECTOR RAUH: That's correct. If I can  
21 make a comment.

22 If it's the Committee's direction to remove this  
23 provision from the regulations, that's relatively simple  
24 for the staff to do to keep this process moving forward.  
25 So you can direct us to do that. We can take the language

1 out and move them forward.

2 CHAIRPERSON MULÉ: Well, I guess my feeling on  
3 all of this is for as long as I've been around -- and  
4 George Larson, I haven't been around nearly as long as you  
5 have. But in three and a half years I've been here, this  
6 has been an ongoing issue. And frankly, it's taken a lot  
7 longer than I would have liked to address the many issues  
8 that we're trying to deal with.

9 So again, in the interest of moving the process  
10 forward, I would like for staff to identify those issues  
11 that are statutory in nature and that we need to deal with  
12 over at the Legislature.

13 Those issues that we have here in the regs, I  
14 would recommend that we eliminate the resin switching as a  
15 source reduction compliance option in this version.

16 But in the interest of moving this whole agenda  
17 forward, I really believe that we need to put these out  
18 for 45-day comment period. So that would be my  
19 recommendation.

20 And Board Member Peace, it's up to you to either  
21 concur or not. But I just feel that we really need to  
22 move forward with this. Otherwise, we're going to  
23 continue to talk and talk and talk and talk and talk and  
24 not get anything done.

25 COMMITTEE MEMBER PEACE: I agree that we need to



1 move forward with this. So when we say move forward, does  
2 that mean open everything up to talk about or open it up  
3 to talk about the resin switching?

4 Or do we have to talk -- when we open it up, does  
5 it have to talk about everything again that you have in  
6 here, the pre-certification process? Do we have to take  
7 comments on everything in here if you reopen it up?

8 PROGRAM DIRECTOR RAUH: I think our suggestion  
9 was that we would take out the provision that you  
10 discussed and everything else would go forward for 45-day  
11 comment.

12 BOARD MEMBER CHESBRO: Not quite everything else.  
13 There's some other --

14 CHAIRPERSON MULÉ: But all this is doing is  
15 moving the process for public comment for 45 days. So  
16 that I believe by law they would be allowed to comment on  
17 these entire reg package.

18 STAFF COUNSEL BRANCH: That's correct.

19 CHAIRPERSON MULÉ: But they have 45 days.

20 STAFF COUNSEL BRANCH: There is just moving it  
21 into the official process whereupon the entire public gets  
22 to come back, bring up all these subjects all over again.  
23 We get to deal with them during the formal rulemaking.

24 COMMITTEE MEMBER PEACE: That's the process any  
25 way.

1 CHAIRPERSON MULÉ: But we're moving it forward.

2 That's my preference.

3 STAFF COUNSEL BRANCH: I may be speaking out of  
4 line just as legal counsel, but I was involved in the  
5 informal process. And my fear is going, back to the  
6 informal process, we had three separate chances for our  
7 Advisory Committee to submit comments during which they  
8 submitted -- the themes of the comments were similar in  
9 all three periods. And if we go back, we're going to get  
10 those same comments during a further informal rulemaking.  
11 And we haven't gone anywhere. So it's sort of we  
12 either -- in my opinion, we either need to go to AOL or  
13 just stop.

14 CHAIRPERSON MULÉ: Board Member Chesbro.

15 BOARD MEMBER CHESBRO: Madam Chair, to remind you  
16 of my comments during the public comment period or the  
17 public testimony, in addition to the issue we've been  
18 discussing about light weighting, I also wanted to make  
19 sure that the version that we put out makes clear the --  
20 reflects the legislative intent to allow the utilization  
21 of credits to only -- of another company to only be within  
22 corporate ownership and not be outside of a single  
23 corporate structure.

24 And there was one other small thing I wanted to  
25 mention too, if I may.

1           CHAIRPERSON MULÉ: Please.

2           BOARD MEMBER CHESBRO: And that is with regard  
3 to -- under that alternative compliance methods, it also  
4 refers to recycled material export. And it mentions  
5 material going to another state. And it should be clear  
6 that we're not just talking about to another country. I  
7 think it should just apply to another state. I think  
8 that's a clarification. I think that's the intent. I  
9 don't think it's anything outside the intent. But I don't  
10 think it's explicit. And it probably should be.

11          MR. POLLACK: Excuse me, Madam Chair. Can I make  
12 one point? I want to respond to Mr. Branch about what  
13 happened in the prior interested parties meeting. On  
14 behalf of myself and probably several others in this room,  
15 we submitted many comments about the proposed regulations.  
16 However, it was very difficult to engage in any  
17 discussions with the staff. Virtually all of the  
18 recommendations from myself and many of us in this room  
19 were rejected out right.

20          So I would just say you may be seeing the same  
21 thing, but it's unfortunate we haven't had the opportunity  
22 to get the full discussion of what is an RPPC. Looking  
23 back at all the information.

24          I just wanted to put that on the record. Thank  
25 you.

1           CHAIRPERSON MULÉ: Okay. I just have one more  
2 question for staff before we move forward on this. Have  
3 you conducted an evaluation of the current certification  
4 process?

5           SUPERVISOR LEAON: Mike Leao, Supervisor,  
6 Minimum Content Compliance Section.

7           Well, through the implementation of the program  
8 now going back through the first certification cycle in  
9 1996, our experience with the program implementation is  
10 reflected in the proposed changes that we're making. If  
11 you're asking us if we've done some sort of outside survey  
12 or --

13          CHAIRPERSON MULÉ: What I'm asking is have you  
14 conducted an evaluation of the certification process?

15          Because it seems to me, again in the time that  
16 I've been here, that we conduct these certifications but  
17 we have issues with them. And I think it would be  
18 valuable for all of us to conduct an evaluation of the  
19 certification process to see how we can improve upon it.  
20 That's all I'm asking.

21          DIVISION CHIEF VAN KEKERIX: That is Lorraine Van  
22 Kekerix, Division Chief for Compliance Evaluation and  
23 Enforcement Division.

24          We have begun to do an evaluation of the  
25 certification process. Many of the things that you see

1 here in these revised regs reflect things that have come  
2 out of that evaluation. And many of the things that the  
3 stakeholders asked for at the various meetings also have  
4 been incorporated.

5           One of the things that George Larson mentioned,  
6 the whole early notice process and incorporating that in.  
7 The whole process of determination on containers and  
8 opinions on those has been incorporated in. So there are  
9 a number of things that as we've gone through and  
10 collected all the comments we've begun that. And I think  
11 that we will continue on. If we get these regulations  
12 moving forward, we'll have a little bit of time to do some  
13 more focus on that and gather some more information.

14           CHAIRPERSON MULÉ: Very good. That's exactly  
15 what I want to hear.

16           I think again if you can share that with the  
17 Board members to share with us what's working, what's not  
18 working, it's going to help us support what you're trying  
19 to do in developing the regs.

20           PROGRAM DIRECTOR RAUH: Madam Chair, I might also  
21 mention that communication and outreach with industry has  
22 been an issue with this program.

23           And again reflected in a chart that was part of  
24 the presentation shows that we hope we have and believe  
25 we've heard and that one of the first things we would

1 recommend or carry out as part of the implementation of  
2 this program is an extensive outreach to all potentially  
3 affected parties. And the whole system of bringing people  
4 in and providing technical assistance and information is  
5 all part of that.

6 CHAIRPERSON MULÉ: Very good. Thank you, Ted.  
7 And I do see our Attachment 2 terms of our communication.  
8 So thank you.

9 COMMITTEE MEMBER PEACE: So are we doing Option  
10 1? Is that what we're -- Option 1 with taking out the  
11 resin switching as an option for source reduction.

12 CHAIRPERSON MULÉ: Yes. So we will be moving  
13 these out to 45-day comment period.

14 STAFF COUNSEL BLOCK: And the clarification  
15 that --

16 CHAIRPERSON MULÉ: Clarification on what Senator  
17 Chesbro's bill actually meant coming from the source  
18 himself. So if there's any question out there, there  
19 should be none as of today.

20 Okay. So does everybody understand what the  
21 direction is? We're moving these out. Thank you, staff.  
22 You did a great job.

23 All right. Let's move to item -- Elliot, this is  
24 just direction; right?

25 STAFF COUNSEL BLOCK: This is just direction.

1 The Committee only -- unless there's some reason you  
2 wanted to bring it to the full Board.

3 CHAIRPERSON MULÉ: No. Unless somebody wants it  
4 pulled, they can. Board member wants to pull it at the  
5 Board meeting, they can.

6 STAFF COUNSEL BLOCK: It's actually within your  
7 discretion as the Chair of the Committee to state the  
8 consensus of the Committee. And you can bring it to the  
9 full Board if you believe it merits a discussion by the  
10 entire Board.

11 BOARD MEMBER CHESBRO: Clarification. Does the  
12 committee -- I'm not challenging the committee's  
13 authority. I just want to know. The committee has the  
14 authority to put it out to 45-day notice?

15 STAFF COUNSEL BLOCK: Absolutely.

16 CHAIRPERSON MULÉ: Okay. Our final item of the  
17 day is Committee Item H.

18 PROGRAM DIRECTOR RAUH: Chair Mulé, this item is  
19 an Update of a Request for Direction on the Determination  
20 of the Commingled Recycling Rate for the At-Store  
21 Recycling Program Under AB 2449, an item that we've come  
22 before you first with a contract proposal. And we've  
23 updated you a number of times and we're here for a  
24 direction from the Committee. Thanks.

25 To make the presentation we have Neal Johnson.

1 CHAIRPERSON MULÉ: Good afternoon, Neal.

2 (Thereupon an overhead presentation was  
3 presented as follows.)

4 MR. JOHNSON: Good afternoon, Madam Chair,  
5 members of the Committee, other Board members. We are  
6 here to discuss Item H on this agenda, which is an Update  
7 and Request for Direction on the Determination of the  
8 Commingled Recycling Rate for the At-Store Recycling  
9 Programs Under AB 2449.

10 --o0o--

11 MR. JOHNSON: Trying to speed up this.

12 In September, we were here and you approved  
13 noticing the filing notice for the permanent regulations.  
14 We at that time were in the process of discussions with  
15 both the Department of Conservation's Division of  
16 Recycling and the California Conservation Corp with  
17 respect to performing the work dealing with the sampling  
18 and sorting to which would be the basis for which the rate  
19 would be determined.

20 We are actually now talking with California State  
21 University Sacramento because both CCC and Department of  
22 Conservation due to workload issues have essentially  
23 demurred. In mid September, we went to a local recycler,  
24 sorted some bails of film plastic coming from major  
25 retailer. I'll get to that a little bit later. And then



1 met with industry stakeholders, particularly the grocers  
2 and retailers associations about three, four weeks ago.  
3 And in that discussion, it became very clear that there  
4 were differences of opinion on exactly what this creature  
5 called commingled rate was and how it would be calculated.  
6 And that brings us to today's agenda item.

7 --o0o--

8 MR. JOHNSON: The emergency regulations which  
9 this Board approved in June and the Office of  
10 Administrative Law adopted the end of July defines a  
11 plastic carry-out bag identically with how it is defined  
12 in the Public Resources Code, which is the plastic  
13 carry-out bag is a plastic carry-out bag provided to  
14 customers at the point of sale or by a store.

15 And the statute defines stores as two entities:  
16 Supermarkets with over two million gross annual sales and  
17 licensed pharmacies with at least 10,000 feet of retail  
18 space.

19 And then the bags also have to have a specific  
20 text that says, "Please return to participating store for  
21 recycling."

22 We also created as part of the regulations there  
23 is no equivalent in the statute of a thing called a  
24 commingled recycling rate, which is was to measure the  
25 percentage of plastic carry-out bags in all film plastic

1 materials recycled by the stores. And as it was  
2 constructed, they would actually allow you to do a  
3 calculation of the rate at which those bags were in fact  
4 recycled.

5 --o0o--

6 MR. JOHNSON: We also in the regulations created  
7 a requirement that store operators file annual reports  
8 with the Board no later than April 1 of each year and they  
9 would provide essentially three pieces of -- or two pieces  
10 of information: The weight of the plastic carry-out bags  
11 purchased -- in other words, those put into the stream of  
12 commerce -- and then either the weight of the plastic  
13 carry-out bags that are recycled or the weight of all film  
14 plastic materials recycled. Because as we had I think  
15 stated in the previous agenda items, it is fairly common  
16 among at least the major players to commingle those bags  
17 with other film coming primarily from store operations and  
18 recycle that mass in total.

19 And what the commingled rate would do is provide  
20 a factor that would be used most likely by the Board to  
21 actually want to reuse those filings to make an estimate  
22 of the amount of plastic carry-out bags recycled.

23 And then the Public Resources Code really doesn't  
24 say what is reported. It says the stores are to report on  
25 the collection, transport, and recycling of plastic bags

1 and make those records available to the Board upon  
2 request.

3 --o0o--

4 MR. JOHNSON: Turning to look at how we measure  
5 the success of the program, the statute really doesn't  
6 provide a direct measure. There are several ways one  
7 could look at it. But one of those problems we have is  
8 the inconsistent use on the term carry-out bag in the  
9 statute.

10 The regulations which require annual reports --  
11 require reporting as I said on bags purchased, the amount  
12 of bags recycled or film plastic recycled. And those are  
13 sort of the general measures. There's some other measures  
14 probably of success.

15 --o0o--

16 MR. JOHNSON: One of which was an add in  
17 Sacramento Bee by Macys showing their reusable bags for  
18 purchases. Well, while not directly required under the  
19 law to do so, they have stepped forward and produced  
20 those.

21 As I said we earlier, in September, had done a  
22 trial sorting of film plastic at a recycler here in  
23 Sacramento. We got two essentially one-ton bails from a  
24 major retailer. The bags were -- the bails were sorted  
25 into five basic categories that are fairly consistent with

1 the categories used in the waste characterization analysis  
2 the Board periodically does with a couple of exceptions.  
3 But we were particularly looking at plastic carry-out bags  
4 versus other plastic shopping bags that are in other words  
5 bags provided for or by retailers who are not subject to  
6 this law. And then other plastic bags and non-bag film,  
7 which is a large percentage of the material. And then a  
8 category we didn't find in this one but expect to  
9 encounter, other plastics, particularly some beverage  
10 containers and other durables such as broken pallets.

11 --o0o--

12 MR. JOHNSON: Out of that sorting, couple of the  
13 things that we found was that there appears to be roughly  
14 equal amounts of the plastic carry-out bags from the  
15 regulated stores in the non-regulated shopping bags from  
16 stores not regulated by the law.

17 The sorters did not know which businesses were  
18 inherently know which businesses were stores. Staff  
19 actually sat and sort of pointed in bin or that bin as  
20 they sorted.

21 COMMITTEE MEMBER PEACE: Can you explain that  
22 again, what you just said? They were trying to sort  
23 out --

24 MR. JOHNSON: The sorters were trying to define  
25 what are plastic carry-out bags from other shopping bags.

1 COMMITTEE MEMBER PEACE: The regulated --

2 MR. JOHNSON: The regulated versus non-regulated.

3 COMMITTEE MEMBER PEACE: Why is it that hard to  
4 do? Here is said something about not knowing the names of  
5 the stores.

6 MR. JOHNSON: Well, they didn't know -- I'll give  
7 you. They didn't necessarily --

8 BRANCH MANAGER SALA-MOORE: Sherrie Sala-Moore  
9 with the Jurisdiction and Minimum Content Compliance.

10 Just as an example of how this would work, we do  
11 have some bags here. The sorters would actually go  
12 through and look at every bag to determine what's on the  
13 bag. For example, here is a Macy's bag. That's a  
14 non-regulated store. It would go into a non-regulated  
15 shopping bin.

16 MR. JOHNSON: One From Raley's clearly regulated,  
17 a produce bag.

18 COMMITTEE MEMBER PEACE: I don't know understand  
19 why they need to know the names of the stores.

20 MR. JOHNSON: Because you're trying to figure out  
21 which ones -- if you're trying to sort for plastic  
22 carry-out bags because the definition of plastic carry-out  
23 bag is tried to a regulated store.

24 COMMITTEE MEMBER PEACE: I have my bags, too. If  
25 it's a regulated store -- if it's a regulated store, it

1 says on the bag, "Please return this bag for recycling."  
2 If it doesn't say that, it's not a regulated store. It  
3 has -- according to the law, it has to say that. If it's  
4 a regulated store, it has to say that on the bag. All  
5 they need to do is look there on the bag to say, "Please  
6 return to participating store for recycling."

7 Now if the bag companies were really serious  
8 about this, they wouldn't put it so tiny down here you  
9 need a microscope to see this. If they really wanted to  
10 get credit for all the bags that need to be recycled, it  
11 would be in big letters across the top or on the back  
12 where people can see it.

13 BRANCH MANAGER SALA-MOORE: There are  
14 non-regulated stores that are also participating with  
15 those types of bags. A lot of these bags are printed and  
16 disbursed to many types of stores, so that would not  
17 determine whether it's a regulated store or not.

18 COMMITTEE MEMBER PEACE: How many bags really do  
19 that, say "Please return to participating store." A lot  
20 of them might have the little recycling emblem. But like  
21 actually the Macy's bag doesn't. I know my Target bags  
22 don't.

23 MR. JOHNSON: Well, Target if you look at in the  
24 bags produced lately on the bottom of the edge says  
25 "California only, please return to a participating store

1 for recycling."

2 We have Save-Mart, a major northern California  
3 grocery chain whose text is, "Recycle this bag by  
4 returning to SMart, Save-Mart, or Food Max." Parts of  
5 their corporation.

6 COMMITTEE MEMBER PEACE: So there are bags that  
7 have it on there -- that answers any question. None of  
8 the bags I have I don't remember seeing it on there.

9 STAFF COUNSEL HUNT: Heather Hunt, from legal.

10 The bottom line isn't so much what's on the bags  
11 is that you have to take the time to read them. So  
12 regardless of whether they are properly labeled or not,  
13 you still have to take that time to read them, which is  
14 what we're trying to avoid. Because it's almost cost  
15 prohibitive in the study we're trying to do and it's  
16 terribly cumbersome.

17 BOARD MEMBER PETERSEN: So how do we regulate the  
18 regulated bags if we don't know what's going out the door  
19 and then what's coming in? How do we do that unless we  
20 actually do samplings and commingled rate studies?

21 BRANCH MANAGER SALA-MOORE: I think the  
22 presentation will address that.

23 MR. JOHNSON: That's what we're here to try to  
24 talk about some of the issues.

25 It's clearly the avenue we wanted to go down. In

1 having started to look at it, there are some logistical  
2 questions. Here is a bag that instead of on the bottom  
3 has on the top a little larger print, "Return to a  
4 participating store for recycling." This did not come  
5 from a regulated store.

6 CHAIRPERSON MULÉ: Neal, I think in the interest  
7 of time, I think we're all familiar with the challenges we  
8 have. So if you could just move forward to your  
9 recommendations, because I think we all pretty much have  
10 an in our minds what we'd like to see.

11 MR. JOHNSON: Well, actually, there's -- before  
12 we get to the recommendations. In meeting with the  
13 stakeholders a few weeks ago, we had some differences. It  
14 was clear that the parties had differences of thought how  
15 this really worked. And I think some subsequent speakers  
16 may say that. It is the expectation of the stakeholders  
17 that the stores -- this program was created with the  
18 stores as defined, the markets and large pharmacies as the  
19 infrastructure for recycling both plastic carry-out bags  
20 as defined by regulation and statute and non-regulated  
21 bag. And they should be credited with that. And they  
22 have essentially the same issue Heather just raised of it  
23 become very expensive --

24 CHAIRPERSON MULÉ: We understand. We understand.

25 --o0o--



1 MR. JOHNSON: Our conclusions are it's difficult,  
2 costly to separate.

3 --o0o--

4 MR. JOHNSON: And we finally come to our  
5 recommendation, which is to adopt Option 1 and calculate  
6 for 2007 the commingled recycling rate using both  
7 carry-out bags as defined and other plastic shopping bags.  
8 And that's what we would like to go forward. That I think  
9 creates -- has one issue that one can never quite figure  
10 out what is the rate at which the carry-out bags --  
11 because we'll get purchase data are in fact recycled. But  
12 it gives a much better handle on what the program is  
13 trying to do.

14 And with that, I thank you. Any questions?

15 CHAIRPERSON MULÉ: Thank you.

16 We do have two speakers. So I would like to hear  
17 from the speakers first and then we'll take questions.

18 George Larson.

19 MR. LARSON: Thank you, Madam Chair, George  
20 Larson again representing American Chemistry Council. And  
21 as of January 1, 2008, also the Progressive Bag Alliance  
22 which will become an operating unit of the ACC.

23 Where do I start?

24 I want to say I support the staff's  
25 recommendation, but I have some serious issues that I feel

1 need to be addressed. And Neal raised some of them.  
2 Because in my discussions with staff, I get the sense that  
3 they're a little unsure of the firmness of the footing  
4 that they're on under this legislative statute. It's just  
5 as Board members' questions have indicated, there's a lot  
6 of unknowns here about how this will actually work.

7 I'm also aware that the legal opinion of your  
8 staff supports or interprets the law to narrowly define  
9 the bags to be regulated as those coming out of  
10 supermarkets and those coming out of pharmacies with over  
11 10,000 feet. I just think that runs counter to what is  
12 the Board overarching policy of let's recycle all we can.

13 So staff's effort to come up with this commingled  
14 rate I think addresses the issue that they would like to  
15 see all bags that are to be accepted at the designated  
16 location be accepted. I mean, it's inconsistent to want  
17 to limit that. And citizens won't participate if they  
18 have to separate their bags at the door.

19 How that calculation goes in the vac, I guess  
20 referring back to the previous item, I would be reluctant  
21 to see the Board going to a numerator and denominator  
22 quagmire like we had with rigid plastic packaging  
23 container until the Senator, who's not here now, repealed  
24 that provision of the RPPC law. Because there was a lot  
25 of energy expended. And depending on who was describing

1 what portion of the elephant, it didn't work.

2 I also want to refer back to the last item,  
3 because I think there's some need here to go back and take  
4 a look at the statute and the regulations and let's decide  
5 what needs to be changed in statute and what needs to be  
6 changed in regulation. Because as I understand it, some  
7 of the decisions and some of the language that went into  
8 the law might have been crafted at that last 11:45 hour  
9 before the Legislature went home after their session and  
10 may not have had the kind of vetting legislatively it  
11 needs. I don't think the cake is fully baked, to use an  
12 old expression.

13 But if we did go back and look at how this might  
14 be looked at legislatively, I think there are some good  
15 ideas and I would submit a few. One is let's not do this  
16 numerator denominator thing. Let's start with a base  
17 year, accept all the bags, and then on year one you set  
18 that base line. On year two, through public education and  
19 participation accepting all bags at these locations, you  
20 see if the year two performance is above year one. You do  
21 that over five years, and if at the end of five years you  
22 don't have a higher recycling rate, then something is  
23 wrong with the program and it does need fixing.

24 But I'm willing to venture a guess. Without all  
25 that paperwork stuff that if we just reported the total

1 volume of bags delivered to the door that go out the back  
2 and record that over time, it's going to be an upward  
3 trend of successful recycling.

4           So I need some counsel on my knowledge about  
5 emergency regulations, because what I would suggest is  
6 that the emergency regulations period, which I think is  
7 120 days, might be extended for 120 days so we can go back  
8 to the author collectively or the Board go back to the  
9 author and say what did you want done. We got  
10 clarification from an author today, and it didn't take a  
11 lot of time. I would suspect that Assemblymember Levine  
12 would be in favor of recycling as many bags as he could.  
13 Thank you.

14           CHAIRPERSON MULÉ: Thank you.  
15           Elliot.

16           STAFF COUNSEL BLOCK: Yeah. If you'll just beg  
17 my indulgence for one minute. It's important to make sure  
18 we're all taking about the same context and directions  
19 here. This is not a revised regulation or send them out  
20 to notice discussion. Although depending on what your  
21 decision might be, there might be some impact in that  
22 regard.

23           But today's discussion is actually focused on how  
24 the Board or its contractor is going to come up with a  
25 number that will then be used. It is not about saying

1 stores can comply by only reporting certain things. It's  
2 just about how we're going to come up with a number. The  
3 stores will get a number however we calculate it and then  
4 apply it to their bags to their total.

5 CHAIRPERSON MULÉ: Appreciate that.

6 STAFF COUNSEL BLOCK: It heard I said about three  
7 different ways. So I wanted to just clarify that.

8 And then staff's presentation is about as a  
9 practical matter what's doable and efficient to come up  
10 with the number that we're going to come up with.

11 CHAIRPERSON MULÉ: Thank you. Okay.

12 Our next speaker is Isaac from the Progressive  
13 Bag Alliance.

14 Thanks, Elliot.

15 MR. BAZBAZ: Good afternoon, Board members and  
16 staff. Thank you for allowing me to speak to you. My  
17 name is Isaac Bazbaz. I'm the director of Super Bag  
18 Corporation. We manufacture plastic bags, the grocery  
19 bags, retail bags, and we distribute them nationwide.

20 I'm also the Chairman of the Progressive Bag  
21 Alliance which represents more than 80 percent of the bag  
22 manufacturers in the United States. And we are here to  
23 support the recommendation of staff.

24 We are manufacturing the grocery bags or retail  
25 bags, and there is a distinction between those bags,

1 because we're trying to get all the stores in  
2 United States to do the same thing of in-store recycling  
3 that California is doing. So in that respect, we're  
4 putting all that language of "Please return to  
5 participating store for recycling" in all the bags that  
6 goes to Wal-Mart and to many other retailers even though  
7 they are not in California.

8 So what we're trying to do of course is making  
9 sure that once we establish the infrastructure for  
10 recycling is there. And if we don't motivate all the  
11 value chain in doing this, we are just not going to get  
12 there. So that's the point of the industry, and I thank  
13 you for your time.

14 CHAIRPERSON MULÉ: Thank you very much, Isaac.  
15 Appreciate your being here.

16 Next speaker is Kristen Power.

17 MS. POWER: Madam Chair, Board members, Kristen  
18 Power, California Groceries Association.

19 CGA represents chain and independent grocers as  
20 well as convenience store and mass merchandisers. We are  
21 here in support of the staff recommendation for a  
22 commingled recycling rate methodology based on the weight  
23 of all plastic carry-out bags provided to consumers by  
24 California retailers.

25 As an interested stakeholder in the discussions

1 that resulted in the final language of AB 2449 and a very  
2 interested participant in the working group that developed  
3 the regulatory language, we understood the data collection  
4 would be based on the weight of all carry-out bags both in  
5 recognition of the fact that certain retailers are being  
6 required and are happy to serve as a community collection  
7 point for plastic carry-out bags and other plastic film  
8 regardless of the provider of those bags, as well as  
9 recognition of a practicality of establishing the  
10 commingled rate.

11 For example, there are chains that may operate  
12 stores that are mandated to comply as well as stores that  
13 are not mandated to comply. However, they are unlikely to  
14 provide bags that do not contain the mandatory recycling  
15 message. After all, encouraging consumers to recycle is  
16 in the best interest of the chain and in the best interest  
17 of our environment.

18 This reality further complicates an already  
19 difficult and very time consuming data collection process.  
20 I believe staff has done a very thorough job in  
21 researching the issue. And the staff recommendation takes  
22 into account both the understanding of the stakeholders  
23 and the practical realities of data collection and  
24 recycling and collection of plastic bags at store.

25 Again, CGA supports the staff recommendation and

1 encourages your support. We are very interested in  
2 continuing our discussions as it relates to this issue and  
3 others in the permanent regulatory process as we are  
4 learning more every day about what it really means to  
5 collect bags, to recycle them, and how those bags come to  
6 the recycling stations from various chains and the way  
7 those bags are going to be recycled. Thank you.

8 CHAIRPERSON MULÉ: Thank you, Kristen.

9 Last speaker, Laurie Hanson.

10 MS. HANSON: Thank you, Madam Chair and members.

11 I hate to admit this, but I must be some kind of  
12 jinx because I was also around when George was around in  
13 1991 and helped negotiate the RPPC law. So now I'm  
14 standing before you as someone that helped negotiate the  
15 plastic bag recycling law. So don't shoot me. There has  
16 to be something there.

17 Well, as a matter of fact, as the lead negotiator  
18 on behalf of the plastic bag manufacturers during this  
19 process, I know that it was the intent while we were doing  
20 this in the Legislature to include all retail carry-out  
21 bags in the recycling rate. In fact, Larry Johnson was  
22 the one that provided Assemblyman Levine with the  
23 definition that is in there. And we never felt it was  
24 tied to which stores were being regulated or not.

25 And so I do agree with George that as this bill



1 was negotiated in the last hours that unfortunately that  
2 particulate clause may be coming back to bite us or bag us  
3 as we might say at this point.

4 We agree with staff that -- by the way, I'm  
5 representing the California Film Extruders and Converters  
6 Association and the Film and Bag Federation at this time.

7 We would agree with staff that the option they're  
8 putting forth is the best option.

9 And just to indulge your time a bit longer, as  
10 this was negotiated, it was contemplated in several  
11 instances that all retailers would be required to provide  
12 at-store recycling. And I think that Kristen and CGA  
13 would agree we had these discussions.

14 If you think that figuring out this rate is  
15 complicated, you ought to try sitting down with a bunch of  
16 retailers that are all in one mall and figure out how each  
17 and every one of them were going to provide an at-store  
18 recycling opportunity. And as people brought their bags  
19 back to each store at Arden Fair mall, the amount of bags  
20 would be very small. And conceivably because it was so  
21 small, we could have a situation where the operator would  
22 do the inconceivable of throwing them away instead of the  
23 recycling them.

24 So the Grocers' Association and their members  
25 graciously stepped forward to agree to be the repository

1 for all the retailers' bags that were coming back. I  
2 don't think any of us contemplated we would be separating  
3 regulated bags from unregulated bags and counting that  
4 towards a positive recycling rate.

5 So I would be happy to answer any of your  
6 questions. But we would definitely support the  
7 recommendation of staff.

8 CHAIRPERSON MULÉ: Thank you.

9 Okay. That concludes our speakers. I do have a  
10 question for staff. In the emergency regs, the current  
11 definition of regulated of bags, it includes -- the  
12 commingled rate includes the definition of regulated  
13 bags --

14 STAFF COUNSEL BRANCH: That's correct.

15 CHAIRPERSON MULÉ: So in order for us to go this  
16 route that staff is recommending, we would have to change  
17 the emergency regs; is that correct?

18 STAFF COUNSEL BRANCH: That's also correct.

19 CHAIRPERSON MULÉ: So in my mind that presents a  
20 problem, a delay in getting things done.

21 My next question for staff is have we done a cost  
22 comparison of conducting the waste characterization with  
23 the regulated and unregulated bags as well as separating  
24 out the regulated from unregulated bags?

25 BRANCH MANAGER SALA-MOORE: Sherrie Sala-Moore

1 with the Jurisdiction Minimum Content Compliance.

2 We did look at the proposal we received from  
3 Sacramento State. And they have in their allocation for  
4 the 75,000 we have been allocated, they were going to be  
5 able to provide 45 days of sampling. If this process to  
6 separate the bags takes three to five times longer, we  
7 would anticipate having one-third to one-fifth the number  
8 of samples in order to base our numbers on, which would  
9 not be as reliable -- the data could not be quite as  
10 reliable or quite as accurate. And that's one of the  
11 concerns that we have.

12 CHAIRPERSON MULÉ: So you're saying here it would  
13 cost an additional 25 to \$125,000 for --

14 MR. JOHNSON: That was based on looking at the  
15 proposal from Sacramento State and trying and looking at  
16 what they were estimating for sampling costs and what we  
17 think would be needed to do this.

18 When we did the test sort, one bail we went  
19 through fairly quickly in about 20 minutes, because it was  
20 primarily all film out of store operations. The bags  
21 were virtually all garment bags in a garment bag and that  
22 was easy.

23 The other was one where we literally they were  
24 tearing apart and we were sort of telling which bin. But  
25 it required actually pretty well knowing who the players

1 were, which in the case of the big boys I think we all  
2 know. But in the case of smaller markets, Kristen has  
3 roughly 6,000 members. The industry guide book I think  
4 shows about 6200 markets in California. So not all of  
5 them have plastic bags. But to know all of those would be  
6 virtually impossible. And it took so long to -- we did  
7 about maybe 200 pounds of the other in over 20 minutes and  
8 it was all basically split.

9           BRANCH MANAGER SALA-MOORE: Just to clarify, this  
10 is a new process. We have done our waste characterization  
11 studies and looked at some of the plastic types, but not  
12 in this level of detail. This is a new study. And  
13 there's a lot of unknowns. We don't know the variations  
14 yet that we're going to anticipate. The test indicated  
15 that there might be high variance rates. High variance  
16 rates typically indicate you need higher sample numbers.  
17 So those are just considerations.

18           CHAIRPERSON MULÉ: Now Board Member Petersen and  
19 I, we've done this. So we know there is going to be a  
20 high level of variance in this.

21           BOARD MEMBER PETERSEN: Madam Chair, how much  
22 would it cost to get reliable data identifying regulated  
23 and non-regulated bags separately?

24           BRANCH MANAGER SALA-MOORE: Actually, we need to  
25 conduct this initial pilot study to determine the variance

1 rate. The variance rate, once we have that, you can  
2 determine the number of samples that you need for a  
3 representative. Until we have that, we cannot calculate  
4 that.

5 BOARD MEMBER PETERSEN: Have you checked with  
6 other resources that can do the sampling besides  
7 Sacramento State?

8 BRANCH MANAGER SALA-MOORE: Well, we looked at  
9 Conservation and the Conservation Corp?

10 BOARD MEMBER PETERSEN: Have you talked to UCLA  
11 or any others that are very, very involved in this kind  
12 of --

13 DIVISION CHIEF VAN KEKERIX: I believe to this  
14 point we've only talked with Department of Conservation,  
15 the California Conservation Corp, several local  
16 Conservation Corps, and now with Sacramento State who's  
17 indicated they would be interested.

18 BRANCH MANAGER SALA-MOORE: We learned about them  
19 because they had done a commingled rate study for  
20 Conservation.

21 BOARD MEMBER PETERSEN: And UCLA has been  
22 involved with this a long time ago with DOC on their  
23 commingled. You might want to check with them, because I  
24 don't know if those numbers would substantiate -- the  
25 numbers will probably be different, is what I'm saying.

1           CHAIRPERSON MULÉ: Board Member Peace.

2           COMMITTEE MEMBER PEACE: You know, I think it is  
3 great -- that's great to hear from Kristen that the  
4 regulated stores will be happy to be the collector for all  
5 bags. I mean, that's a great idea. It makes a lot of  
6 sense to me to be able to return all of your plastic bags  
7 to one store and not have to take each bag back to each  
8 store. So that makes total sense to me.

9           But if they were really serious, they'd have  
10 bigger recycling containers at the store and take off the  
11 signs that say only put the bags you get from the store in  
12 the recycle.

13           But aside from that, I guess the question we need  
14 to ask is whether we count only the regulated bags or we  
15 count all the bags to determine the commingled rate. What  
16 do we intend to do with that recycling rate once we get  
17 it?

18           MR. JOHNSON: The function of it was to provide a  
19 data point on the number of carry-out bags recycled.  
20 We're expecting most of the operators will report the  
21 total film recycled basis. And particularly the big  
22 players which control a good 70 percent of the market will  
23 report that. And the rate was intended as a way to get an  
24 estimate of the number of bags out of the total so we get  
25 a sense of how well this program was working.

1 COMMITTEE MEMBER PEACE: So we're getting a bag  
2 out of the total and we get that total from the store  
3 operators or manufacturers that know the total number of  
4 bags --

5 BRANCH MANAGER SALA-MOORE: The store operators  
6 would report the weight of their bails of film plastic.  
7 And that would be multi types of plastics, the shopping  
8 bags and other types of plastic such as stretch wrap would  
9 be included in that.

10 The commingled rate would tell what percent of  
11 that bail on average would be the shopping bags. So they  
12 can report the weight for a bail of material and we could  
13 find out whatever it was, ten percent, and apply that  
14 percentage to the bail to get the amount of weight for the  
15 shopping bags only. And then we need to conduct this  
16 commingled rate study annually to see how it changes  
17 overtime.

18 COMMITTEE MEMBER PEACE: Are we trying to find  
19 out how many of the regulated bags get cycled as compared  
20 to how many are used? Are we trying to just find out how  
21 much plastic is being recycled?

22 Because if we're trying to find out how many of  
23 the regulated bags are being recycled as compared to how  
24 many are put out there in the environment, a commingling  
25 of all bags is not going to give us -- it's going to give

1 us a false number.

2 MR. JOHNSON: As we had originally structured,  
3 the commingled rate would give an estimate of the number  
4 of plastic carry-out bags that were recycled. We will get  
5 a number of plastic carry-out bags purchased. And if you  
6 have an estimate of recycled, you can figure out that  
7 rate.

8 As we are proposing today, you would not be able  
9 to do that because you wouldn't have comparable data  
10 point.

11 BRANCH MANAGER SALA-MOORE: Procedurally, looking  
12 at the logistics, stores backhaul this material to the  
13 regional distribution centers where if it's not already  
14 bailed, then it's going to be bailed. So you can have a  
15 store operator like Safeway or Raleys and they're going to  
16 regionally collected this material and then recycle it in  
17 that manner. So they can also report according to the law  
18 as regional entities, and then we would have the  
19 commingled rate as an on average value.

20 So you're right. It's not a measured number. It  
21 is an estimated number that would be applied to estimate  
22 the amount of weight of shopping bags. And then you can  
23 compare it from year to year to see the improvements made  
24 every year and those numbers and what gets calculated as  
25 the amount of shopping bags recycled. You would have an



1 annual amount to compare from year to year.

2 BOARD MEMBER PETERSEN: I'm sorry. Were you  
3 finished? Cheryl, are you finished?

4 COMMITTEE MEMBER PEACE: Yes.

5 BOARD MEMBER PETERSEN: I just think, okay, we  
6 went ahead -- this is all being regulated, regulated bags,  
7 what's going out the door and what's going back in. To  
8 measure that in a commingled rate, we should take a look  
9 at seeing what's that going to cost. And we should do  
10 what the statute has said they wanted to do, is we want to  
11 know how many of the regulated bags are being recycled.  
12 And what's that being measured against what's going out  
13 the door. And I think that's the intent. That's why we  
14 here. That's why this happened.

15 CHAIRPERSON MULÉ: I guess my feeling on this  
16 issue is that we really should look at Option 2. And what  
17 I'd like to do though is with the concurrence of the  
18 Committee is to ask staff to come back to us if it's  
19 possible by the Board meeting to come back with some more  
20 specific information on what those the cost differential  
21 might be. Because it sounds -- it is tedious.

22 But again, if we really want to have as accurate  
23 a number as we can on the recycling rate of the regulated  
24 bags, as Board Member Petersen and Board Member Peace have  
25 said, that was the intention of the law.

1           I really think we need to -- you know, we need to  
2 roll up our sleeves and do the extra work. I know it is a  
3 lot of work. But the other thing that it does is then we  
4 don't have to go out and amend the emergency regs. So  
5 while we're saving on, you know, staff time on -- we're  
6 expending it in one area, we're saving it in another area.

7           So I think really if we're serious about  
8 implementing the law, I really think that we need to do  
9 the best job that we can. I'm not saying it's got to be  
10 perfect. But I really think that we should look at  
11 determining the commingled rate from the regulated bags  
12 only.

13           PROGRAM DIRECTOR RAUH: We'll do the best we can  
14 coming back and see if we can refine the numbers that we  
15 presented today for your and the Board's consideration.

16           CHAIRPERSON MULÉ: With the concurrence of Board  
17 Member Peace.

18           COMMITTEE MEMBER PEACE: Oh, yeah. Option two  
19 is -- I think that's the way we should go.

20           But also if you're telling us that separating and  
21 counting regulated bags from the non-regulated bags is  
22 prohibitively expensive, I think maybe we as a Board need  
23 to reconsider our decision to calculate the commingled  
24 recycling rate for the regulated community. Because that  
25 was not part of the legislation. It said the stores were

1 to give us a rate. If the Board asked for it, they were  
2 to give us a rate. It didn't say anything about the Board  
3 spending 100, \$200,000 a year to calculate this rate.

4 CHAIRPERSON MULÉ: But Board Member Peace, that  
5 agreement was subsequent with the advisory group that we  
6 convened. And Board Member Petersen was a part of that as  
7 well as the Chair.

8 COMMITTEE MEMBER PEACE: I'm sure we didn't know  
9 it was going to cost this much.

10 CHAIRPERSON MULÉ: We had made a commitment to  
11 the stakeholders, and we don't want to go back on that  
12 commitment. But by the same token, we want to try to be  
13 as accurate as possible.

14 COMMITTEE MEMBER PEACE: We can do it for a year  
15 and go back and reconsider and say we're not going to  
16 spend \$200,000 a year to do this.

17 CHAIRPERSON MULÉ: We weren't going to do it  
18 every year. It was a one time --

19 COMMITTEE MEMBER PEACE: They told me it was not.  
20 I asked that question at the Board meeting. They said it  
21 was not a one time.

22 BRANCH MANAGER SALA-MOORE: We would need to do  
23 it at least once or every year or every other year to show  
24 the difference of change in time.

25 BOARD MEMBER PETERSEN: Right.

1 COMMITTEE MEMBER PEACE: If we're doing this from  
2 the year the bill was passed, '06, to when it would sunset  
3 in 13 -- so this would cost us \$150,000 a year, \$200,000  
4 -- say it cost us \$200,000 a year to do this times  
5 eight --

6 BOARD MEMBER PETERSEN: I don't think it's going  
7 to cost us that. So I'd like to see some other numbers --

8 COMMITTEE MEMBER PEACE: That's a lot of money  
9 over eight years.

10 CHAIRPERSON MULÉ: Again, if we are going to do  
11 this on an ongoing basis, in my mind it's all the more  
12 reason we need to be as accurate as we can to show the  
13 progress of this program.

14 So again, I just hope that we have stated our  
15 direction. Come back to the full Board with refining some  
16 of the numbers for the additional cost to do the  
17 additional sorting. And then we can take it up next week  
18 at the Board meeting.

19 PROGRAM DIRECTOR RAUH: I think to give us the  
20 maximum amount of time, I don't think we can revise the  
21 item. I think we'll just have to be able to come in and  
22 basically give you the best information we have at the  
23 time.

24 CHAIRPERSON MULÉ: I think that's fine. And  
25 again, you know, I'm thinking -- I'm looking at the bigger

1 picture in terms of revising the emergency regs and, you  
2 know, trying to weigh all that in the decision.

3 So thank you again. I know this is another one  
4 of those things we're trying to do the best we can. So I  
5 think if we spend the time up front it will pay off later  
6 on.

7 So does anybody else have any comments on this  
8 item? Are there any other member of the public, would  
9 like to address the Board on an item other than the items  
10 that have been before us? Okay. With that, this meeting  
11 is adjourned.

12 (Thereupon the California Integrated Waste.  
13 Management Board Permitting and Compliance  
14 Committee adjourned at 5:00 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand  
3 Reporter of the State of California, and Registered  
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the  
6 foregoing hearing was reported in shorthand by me,  
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the  
8 State of California, and thereafter transcribed into  
9 typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said hearing nor in any  
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 12th day of November, 2007.

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